

WISCONSIN WORKERS' RIGHTS MANUAL



**The Workers' Rights Center
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**PRODUCED BY THE
WORKERS' RIGHTS CENTER, INC.**

Acknowledgments

NOTES

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United Migrant Opportunity Services (UMOS)

2317 International Lane

Madison, WI 53704

(608) 249-1180

United Asian Services of Wisconsin

2132 Fordem Ave.

Madison, WI 53704

(608) 256-6400

www.ursw.org

Urban League of Greater Madison, Inc.

2222 S. Park St., Suite 200

Madison, WI 53713

(608) 729-1200

www.ulgm.org

Wisconsin State AFL-CIO

6333 W. Blue Mound Rd.

Milwaukee, WI 53213

(414)771-0700

www.wisafclcio.org

TABLE OF CONTENTS

INTRODUCTION	4
A Checklist for Dealing with Workplace Problems	8
MINIMUM WAGE AND OVERTIME.....	10
Rest Periods	13
Child Labor	14
Wage Claims and Enforcement.....	16
UNEMPLOYMENT INSURANCE.....	18
DISABILITY COMPENSATION	21
WORKERS' COMPENSATION	23
FAMILY AND MEDICAL LEAVE.....	26
SAFETY AND HEALTH	29
EMPLOYMENT DISCRIMINATION	38
Addressing Workplace Discrimination.....	39
Disability Discrimination.....	50
Gender-Based Discrimination.....	53
Sexual Harassment	53
Pregnancy Discrimination.....	54
Race and Color Discrimination.....	57
Religious Discrimination.....	59
Citizenship Discrimination and Document Abuse	59
UNIONS AND GROUP ACTIVITY	65
Union Activity and Legal Protection.....	66
WISCONSIN WORKS (W-2) AND YOUR RIGHTS	67
LAWYERS	71
APPENDIX	
Government Agencies	74
Legal Services and Referral Services	76
Labor, Community and Advocacy Organizations.....	77

INTRODUCTION

Work is an important part of everyone's life. Supporting yourself and your family, being treated with dignity and respect on the job and having a real voice in your work life are all key to your well being. Unfortunately for many, especially those who are most vulnerable, work does not provide these things. The Workers' Rights Center (WRC) has produced this manual to bring together information about the laws that cover the workplace and the agencies that enforce those laws. Many workers do not have this information or know their options if their rights at work are violated.

This manual is intended to serve as a starting point. The manual has been designed for use by advocates and workers alike. It's not intended to serve as legal advice, but to help workers and those who assist them gain a broad understanding of the laws and policies that affect and control their workplace rights, safety, protection and well-being. Please feel free to copy all portions of the manual and distribute them to family, friends and coworkers.

What are the Origins of our Workplace Rights?

People have struggled and died for many of the workplace standards that we take for granted today. The eight hour day, child labor laws, the right to have a union, social security, health and safety protections at work — all these rights came about because workers organized and pressured government and business to establish fair and just workplace standards.

Rights on the Job

- State & Federal Laws
- Union Contract
- Employer's Policies & Procedures

The **Federal Government** has enacted laws establishing a minimum wage, rules on hours and working conditions, laws that bar certain forms of discrimination and laws that spell out the right of workers to act collectively. **State, County and Municipal** governments have also enacted laws that cover the workplace. In some cases State and Local laws go beyond the rights established by Federal law to grant greater rights to workers. Various

Labor, Community, and Advocacy Organizations

Centro Guadalupe

1862 Beld St.
Madison, WI 53713
(608) 255-8471

Centro Hispano

810 W. Badger Rd.
Madison, WI 53713
(608) 255-3018
centrodane.wordpress.com

Latinos United for Change and Advancement (LUChA)

P.O. Box 2033
Madison, WI 53701
(608) 265-9177
salcandresen@yahoo.com

NAACP-Madison Branch

P.O Box 45
Madison, WI 53703
(608) 256-1942
www.naacpmadison.org

Interfaith Worker Justice

1020 W. Bryn Mawr Ave.
Chicago, IL 60660
(773) 728-8400
www.iwj.org

South Central Federation of Labor, AFL-CIO

1602 S. Park St., #228
Madison, WI 53715
(608) 256-5111
www.scfl.org

City of Madison

Discrimination

City of Madison Department of Civil Rights
210 Martin Luther King Jr. Blvd, Suite 523
Madison, WI 53703
(608) 266-4910
www.cityofmadison.com/dcr

Legal Services and Referral Services

Lawyer Referral and Information Service of the State Bar of Wisconsin

P.O. Box 7158
Madison, WI 53707
(608)257-4666
www.legalexplorer.com

Legal Action of Wisconsin, Inc.

31 S. Mills St.
Madison, WI 53715
Milwaukee: (888)278-0633 or (414) 278-7722
Madison and other counties: (800)362-3904 or (608) 256-3304
Intake: Monday-Thursday 9am-12noon
www.badgerlaw.net

University of Wisconsin Neighborhood Law Project

975 Bascom Mall
Madison, WI 53706
(608)262-1002

Unemployment Compensation Appeals Clinic

1602 S. Park Street, Rm 106
Madison, WI 53715
(608)255-5909
Dane County: 211
Outside of Dane County: (608)246-4357
uclinic.rso.wisxc.edu

State and Federal Government agencies are charged with monitoring and enforcing these laws.

If your job is covered by a **Union Contract**, you have additional rights that are spelled out in that contract. Usually with a Union contract, your employer must have ‘just cause’ to fire you. Your contract will probably have a process or grievance procedure for dealing with problems at work or contract violations. Your contract may include rules for scheduling, job bidding, workloads, wages and benefits, etc.

If you are represented by a union, you can expect help from someone with your grievances and enforcing the Union contract. There should be a coworker at your job site who acts as a shop steward to enforce the contract or a Union representative who may be responsible for a number of different job sites who can help. **It is a good idea to get a copy of your Union contract and read it.** Ask your shop steward or Union representative if you have any questions or problems.

Many employers have an **employee handbook** that covers the policies and procedures in effect at your workplace. It may cover benefits that you receive and how you qualify for them. It will often describe the employer’s expectations. You may also have a job description that explains your duties and responsibilities at work. These policies and procedures will often grant you additional rights

If there is no Union contract at your workplace, an employer can change these policies and procedures at any time including changing your rate of pay, canceling or modifying any benefits, and changing your job description. Usually, if you have already earned a benefit such as vacation time, your employer cannot take it back. If your employer violates its own policies and procedures, you may be able to take action to correct the violation.

Resolving a Problem at Work

How you approach a problem at work will depend on your specific situation. It’s usually best to **talk with your immediate supervisor** or someone from Personnel or the Human Resources

Department to make sure that they are aware of the problem. Whether it is a shortage on your paycheck, a safety violation, or the way you are being treated by someone, bringing it to Management's attention may help clear it up.

If your problem is with your immediate supervisor or other manager, go to someone else who might be able to help with the problem. Many workplaces have some sort of complaint process. If you have a union contract, there will usually be a grievance procedure. Talk with your shop steward or union representative about what you can do. It's important that you follow the process that is in place. If this does not resolve your problem then you can consider other steps.

If you are having a problem at work, remember you may not be alone. Talk to your co-workers and consider taking action as a group. Acting together provides you with greater protection (see concerted activity, page 66) and a better chance of resolving your problem more quickly.

Depending on your problem, you may be able to **file a complaint** with a State or Federal agency. Check the specific section in this Manual to see which agencies cover your problem. It is important to pay attention to timelines for filing complaints. If you file late, you may lose your chance. Agencies at different levels of government have different rules and procedures.

You may choose to meet with a lawyer to discuss your options (See page 71). Filing a lawsuit should probably be a last resort. First, you should try to work things out with your employer, even if you have been fired. If you are unsuccessful with your supervisor, you should talk to the Personnel Department if there is one. If all that fails, you may still be required to submit your claim to a government agency before going to court. In many areas of employment law, having the assistance and support of a lawyer, even if you do not plan to file a lawsuit, can be very helpful.

Keeping Records

Keep complete and detailed records about your workplace prob-

State of Wisconsin Government

Unpaid Wages & Discrimination

Wisconsin Department of Workforce Development Equal Rights Division

201 E. Washington Ave. Room A300
P.O. Box 8928 Madison, WI 53708-8928
Voice: (608) 266-6860 Fax: (608) 267-4592
TTY: 608-264-8752
<http://www.dwd.state.wi.us/er/>

Workers' Compensation

Wisconsin Department of Workforce Development Workers' Compensation Division Madison Office

P.O. Box 7901
Madison, WI 53707

201 E. Washington Ave. Room C100
Madison, WI 53703
(608) 266-1340
<http://www.dwd.state.wi.us/wc/>

Unemployment

Wisconsin Department of Workforce Development Unemployment Insurance Division

Bureau of Benefit Operations

Madison Office

P.O. Box 7905 Madison, WI 53707
Information (608) 232-0824 Tty: 888-393-8914
To file initial claim: (608) 232-0678
To file for weekly benefits (608) 261-9990
<http://www.dwd.state.wi.us/uiben/services.htm>

Low Income Health Insurance Program

BadgerCare-Department of Health & Family Services

1-800-2912002
<http://www.badgercareplus.org>

Job Placement Assistance

Dane County Job Center

1819 Aberg Ave. Madison, WI 53704
(608) 245-5390
jobcenterofwisconsin.com
danejobs.com

APPENDIX

Government Agencies

Federal Government

Unpaid Wages

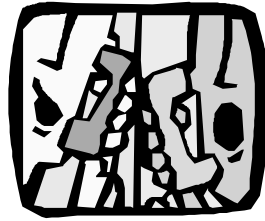
U.S. Department of Labor

Wage and Hour Division

740 Regent St, Suite 102 Madison, WI 53715

(608) 441 – 5221

<http://www.dol.gov>



Unions and Collective Action

National Labor Relations Board (NLRB), Region 30

310 West Wisconsin Ave, Ste 700 Milwaukee, WI 53203

(414) 297-3861

<http://www.nlr.gov>

Discrimination

Equal Employment Opportunity Commission (EEOC)

Milwaukee District Office

Reuss Federal Plaza

310 Wisconsin Ave., Suite 800

Milwaukee, WI 53203

1-800-669-4000

Discrimination involving Immigration Status

Complaints Examining Unit

U.S. Office of Special Council

1730 M Street N.W., Suite 218

Washington D.C. 20636-4505

(800) 872-9855

(202) 254-3670

Health & Safety Protections

Occupational Safety & Health Administration (OSHA)

4802 E. Broadway, Madison, WI 53716

(608) 441-5388

Information Line: (800) 321-OSHA

<http://www.osha.gov>

lems to help insure the protection of your basic rights under the law. The better records you keep, the better you can protect your rights. Start a file for letters or notices you receive from your employer, changes in your benefit plans, performance reviews at your work, disciplinary notices, etc. Keep records as you would keep a personal diary. If you think there is a problem, write down what the problem is, when it happened, and where it happened. Write down who else saw it or was threatened by it. Be sure to inform your supervisor or human resources department in writing. Take special note of any information or events relating to your complaint including:



- Date and time of the incident;
- Location of the incident;
- Conversations regarding the incident;
- Names of any witnesses; and
- Phone calls to government agencies, support services, attorneys and insurance agents.

An Important Note

This is an overview of some of the rights you have in the workplace. It is only a starting point and there are specifics that may directly impact your particular situation. Laws change from time to time, so to get the most up to date information, talk to the responsible government agency, a lawyer or your union representative.

How to Use This Manual

Each chapter of this manual covers a particular aspect of employment law. Each chapter begins with a general summary that lists the main points. The agency that covers this area is listed with a contact number. Then there's a more detailed explanation of the rights and regulations under that area of law. Finally, there is discussion and explanation of how to enforce your rights under that area of law if you believe that they have been violated. In the appendix is a list of the government agencies that enforce various labor laws. There is also a listing of community organizations, legal service organizations and other agencies that may be helpful.

A CHECKLIST FOR DEALING WITH WORKPLACE PROBLEMS

- ✓ **If you are a union member, talk to your steward or union representative.** You may be able to file a grievance with your union. Your union will represent you and try to resolve the problem. Learn what protections your union contract and company rules or handbook provide. If you and at least one other worker take action together to improve working conditions, the National Labor Relations Act **forbids your employer from punishing you**, whether or not you are in a union or intend to organize a union.
- ✓ **Keep clear, written records about your problems.** Keep records as you would keep a personal diary. If you think your rights have been violated, write down how, as well as when and where the violation occurred. Write down who else experienced or witnessed the problem. Make note of all conversations or correspondence with fellow workers or management regarding the incident(s). **If you eventually choose to file a complaint with a government agency, keep copies of all papers or letters that you send or receive. Keep a special log of all phone calls to government agencies, support services, attorneys, and insurance agents. Be sure to date your notes.** Store these records away from the office.
- ✓ **Get emotional support from friends, family and clergy.** Experiencing and addressing workplace problems can be very stressful. Share your concerns with supportive people.
- ✓ **Continue to perform high quality work, while keeping a record of your work performance.** It is especially important to make sure that the quality of your work does



What if I make too much money to qualify for free services, but I can't afford a full-cost attorney?

The **Modest Means Program** of the State Bar of Wisconsin assists people whose income is too high to qualify for free legal services, but too low to pay a lawyer's standard rate. The Modest Means Program is run by the State Bar's **Lawyer Referral and Information Service** (see contact information on previous page).

How much will I have to pay?

The Modest Means Program is not free. It is designed for people who have some ability to pay for a lawyer, but who cannot afford the standard cost of an attorney.

The fee will be determined by the lawyer based on your legal matter and what you are able to afford. As discussed in the previous section, there are various types of fee arrangements that are possible. **You should discuss fees and agree on payment options at the first meeting.** You should also ask for a written explanation of the fees and payment structure that you agree on with your lawyer.

How to Apply for the Modest Means Program

- ✓ Download the application at **www.legalexplorer.com** or call and request a mail-in application at 608-257-4666 or 1-888-529-7599.
- ✓ Complete the application and collect documents that prove your income, assets, and expenses.
- ✓ Mail the application, along with copies of all supporting documentation, to the address listed on the application form.

Questions to Ask Attorneys

When looking for a lawyer, certain questions will help you decide which one is right for you. Some questions you should consider are:

- What, if any, fee do you charge for an initial consultation?
- What is your fee arrangement, including hourly fees?
- Do you take cases on a contingency fee? If so, should I expect to pay for costs? Approximately how much would that amount to?
- Will you be handling my case or will another attorney within your firm handle my case?
- How many cases like mine have you handled?
- If you do not practice in this area of the law, could you recommend a lawyer who does?
- Could you provide me with references?

- **Unions.** If you are a member of a union or other worker organization, the union office will know lawyers who handle cases in most of the areas discussed in this book.
- **Advertisements.** Be aware that advertisements on the radio, television, newspaper and billboards do not necessarily speak to the quality of the attorney, but are simply advertisements.
- **Referral Services.** These services may be able to connect you to an attorney in your area who handles your type of case.

Lawyer Referral of the State Bar of Wisconsin
1-800-362-9082 or 608-257-4666
www.legalexplorer.com

Dane County Bar Association—Attorney Referral
608-848-1850

Paying a Lawyer

Lawyers have several options when it comes to charging fees:

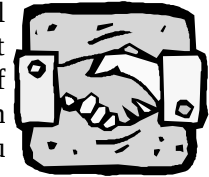
- **No Charge.** Some legal services will not charge a fee if your income is below a certain level.
- **Retainer Fee.** A retainer fee is a fixed amount of money that you agree to pay, in advance, to secure the services of a lawyer. Keep in mind that you will probably be charged additional costs after you pay the retainer fee whether or not you win the case.
- **Contingency Fee.** Many lawyers take cases on a “contingent” basis, meaning that the fee is paid when the case is over. The fee is a percentage, usually between 20% and 50%, of any award or settlement. No fee is paid if the case is lost.
- **Flat Fee.** A lawyer may charge a single, set fee for a service, regardless of the outcome of the case.
- **Pro Bono.** Sometimes a lawyer who would otherwise charge significant fees will take a case on a *pro bono* basis, for no charge. This arrangement is somewhat rare and only occurs if the client has no money but has a particularly good case that involves an issue of great public importance.
- **Court-Awarded Attorney Fees.** In some types of cases, the plaintiff can ask the court to make the opposing party pay his/her lawyer’s fees. Court-awarded attorney fees are only available if you win the case. You will usually have to pay the lawyer up front.

Note: A lawyer is never allowed to pay for the costs and expenses of litigation (e.g. filing fees, service fees, etc.). Such costs and expenses are the client’s responsibility, regardless of whether or not the lawyer charges a fee.

not suffer as a result of the stress you may feel. Your employer may criticize your work performance to justify discriminatory behavior.

- ✓ **Talk to your co-workers** to find out if they have experienced similar problems. Co-workers can offer support and suggestions. If co-workers have experienced similar problems at your current place of employment, they may want to join with you to address the problem or to serve as witnesses to your claim.

- ✓ **File a charge with the relevant State, County, or City agency.** You have the right to file a formal complaint with the appropriate government agency without talking to your employer. If you are considering filing a complaint with a government agency, remember that you only have a very short window of time in which to file. Check with the appropriate agency for the specific time limits for your complaint.



- ✓ **Talk to your employer.** You may want to work out your complaint without contacting a government agency. Submit your complaint in writing to your employer. Some companies have specific informal ways to handle workplace problems, such as mediation. In mediation, you and your employer will talk about the problem with someone both of you trust. Mediation is a way to determine whether or not the problem can be resolved without filing a formal complaint.

MINIMUM WAGE AND OVERTIME



Summary: Under State and Federal Law most workers must be paid at least the minimum wage of \$7.25 per hour for adults and \$5.30 per hour for minors. Your employer must pay you for all hours that you work. In most cases, any hours over 40 in a week must be paid at time and a half. Except for deduction of taxes, your employer must have your permission to deduct money from your paycheck.

Your employer must give you a pay stub that lists any deductions from your paycheck. You have a right to at least 24 consecutive hours off each week. Breaks of less than thirty minutes are on paid time.

Minimum Wage Law

The Federal and State minimum wage laws require employers to pay workers at least \$7.25 per hour. The State of Wisconsin additionally insures that employees who work within the state shall be compensated for work, paid based on time, piecework or otherwise, sufficient to enable the employee receiving it to maintain him/herself under conditions consistent with his or her welfare. Wisconsin state law permits the following workers not covered by FLSA to be paid less :

- Workers under 20 years old may be paid \$5.90 per hour during their first 90 consecutive calendar days of employment;
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage with the permission of the U.S. Department of Labor;
- Tipped workers must receive a cash wage of at least \$2.33 per hour, except tipped opportunity workers whom must receive a cash wage of at least \$2.13 per hour. If a worker's tips combined with the employer's cash wage of at least \$2.33 per hour do not equal the hourly minimum wage, the employer must make up the difference. The regular pay rate of tipped workers

The Fair Labor Standards Act (FLSA) is a Federal law that establishes the minimum wage, overtime pay, record keeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state and local governments.

LAWYERS

The advice and assistance of a lawyer can be very helpful when dealing with a workplace problem. There are a number of different ways to find a lawyer who is right for you. In certain cases, it is possible to obtain low cost representation.

Finding a Lawyer

Some of the laws discussed in this manual are very complicated. Therefore, you may need the help of a good lawyer to fully exercise and protect your rights.

There are several ways to find an honest, competent, and sensitive lawyer who can help you find and pursue your legal options. Here are a few ideas to get you started:

- **Legal Service Organizations.** Some legal service organizations do not charge a fee if you are eligible for their services. Even if you are not eligible for their services, these organizations may be able to refer you to a private lawyer or another community organization that may be able to help you. Below is the contact information for several local legal service organizations.

Legal Action of Wisconsin, Inc.

31 S. Mills Street, Madison, WI, 53715
608-256-3304 (Madison)
1-800-362-3904 (Outside Dane County)
1-888-278-0633 (Milwaukee)

Legal Action handles cases involving public benefits/health law, family law, housing, education, employment, migrant farm-workers, and issues affecting elderly clients.

The Neighborhood Law Project, University of Wisconsin

2300 S. Park Street, Madison, WI 53713
608-260-8221

NLP handles cases involving landlord/tenant issues, public benefits, unpaid wages, and uninsured drivers. Call the number listed above to make an appointment.

The Unemployment Insurance Appeals Clinic

1602 S. Park Street, Room 106, Madison, WI 53715
Mondays 7-9 p.m.

Dane County: 211; Outside Dane County: 608-246-4357
UAC provides representation for people who need help appealing an Unemployment Insurance decision. Call the number above to make an appointment.

For complaints concerning Medical Assistance Service Providers and other Department of Health and Family Services (DHFS) programs call or write:

DHFS
Division of Management and Technology
Office of Civil Rights Compliance
1 W. Wilson, Room 561
P.O. Box 7850
Madison, WI 53707
(608) 266-9372
TDD-Hearing Impaired (608) 266-2555

Worker Displacement

Some labor unions and advocates for the poor are concerned that welfare reform will lead employers to push current low-skilled workers out of their jobs to make way for less costly “Workfare” workers. This is called displacement. Employers cannot hire “Workfare” workers if it would displace existing workers by:

- Causing the termination of current employees, a hiring freeze or layoffs;
- Reducing employee hours, overtime work, wages or benefits;
- Filling a position that would have been a promotional opportunity;
- Filling an already existing, unfilled position;
- Bringing in Workfare workers to replace striking or locked out workers.

If you think your employer has displaced you with a “Workfare” worker, you can file a grievance with the Department of Human Services.

is subject to overtime pay. The full minimum wage rate becomes the tipped worker’s regular rate of pay.

Your company has to pay for all of the time that you work. For example, if you have to drive from your employer’s shop or office to the worksite, your employer must pay you for that driving time. If your employer chooses to give you a 15-minute break during the workday, your employer must pay you for this time. Also, even if your employer is unhappy with the quality of your work, you must be paid for the time you worked. Bona fide meal breaks generally are not paid as work time.

The fair value of meals, lodging, or other facilities provided by the employer may sometimes be considered part of a worker’s wages.

Current Minimum Hourly Wage in Wisconsin
Effective as of July 24th, 2009

	Adult	Opportunity*	As of July 24th, 2009, there is no longer a separate minimum wage for minors in Wisconsin
General	\$7.25	\$5.90	
Tipped	\$2.33	\$2.13	
Agricultural	\$7.25	—	

Wisconsin Minimum Wage June 1, 2006-July 23, 2009

	Adult	Opportunity*	Minor
General	\$6.50 (\$6.55 federal)	\$5.90	\$5.90
Tipped	\$2.33	\$2.13	\$2.33
Agricultural	\$5.15	—	\$4.25

*An opportunity employee is not yet 20 years old and has been employed under a particular employer for 90 or fewer consecutive days from the date of initial employment

These minimum wage rates apply to all employees, including indentured apprentices, employees at private employments including non-profit organizations, whether paid on a time, piece rate, commission, or other basis.

Exempt from the State minimum wage law are the following:

- **Casual Employment**
Employment which is on an irregular or intermittent basis for not more than 15 hours per week for any one employer
- **Employers with Less than 15 Employees**
- **Domestic Service Employment**
Includes butlers, chauffeurs, cooks, day workers, gardeners, graduate nurses, grooms, handy persons, house cleaners, house keepers, laundry persons, practical nurses, tutors, valets and other similar occupations
- **Companions in Private Homes**
Persons who reside in the employer's household for the purpose of companionship and who spend less than 15 hours per week on general household work are not covered under the rates prescribed

An employer who discharges or threatens to discharge, or in any way discriminates or threatens to discriminate against any employee because the employee has testified or is about to testify, in any investigation or proceeding relative to the enforcement of minimum wage, is guilty of a misdemeanor, and upon conviction shall be punished by a fine of \$25 for each offense.

For detailed information on exemptions visit the following web link:
http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=73597&infobase=code.nfo&jump=ch.%20DWD%20272

Mandatory Overtime Pay

- An employer can legally require you to work more than 40 hours per week.
- Most hours worked over 40 hours per week are considered overtime.
- Overtime pay equals one and one half times your regular hourly wage.
For example, a worker who gets paid \$8.00 per hour should earn \$12.00 per hour for every hour over 40 hours worked during a week.
- Overtime must be looked at on a **weekly** basis: you are not entitled to overtime pay for a single shift longer than 8 hours.
- You can refuse to work overtime, but you could be terminated for that choice.
- If you work overtime, you must be paid for it, even if your employer didn't request it. If the employer let it happen and bene-

W-2 agency will then schedule a Fact Finding Review which must be held within 8 days of receiving your request. It's important to remember that your W-2 payments will **not** continue while you are awaiting the Fact Finding decision.

You may have an attorney or advocate with you at the Fact Finding Review. You must attend the review in person. The fact finder will issue a decision within 5 days after the review is held. If you disagree with the fact finder's decision, you can request a second review in writing. You must write the Department of Administration, Division of Hearings and Appeals (DHA) within 21 days from the Fact Finding Notice of Decision date.

Contact Legal Action of Wisconsin at (608) 256-3304 on Mondays from 9am to noon or contact the Neighborhood Law Project at (608) 260-8221 if you would like free legal services to appeal a decision related to W-2 or other benefits.

Filing a Complaint

If you believe your rights have been violated, you may send a complaint directly to the appropriate State or Federal agency. Staff of the agency will provide the results to you within 90 days.

For complaints involving Wisconsin Works (W-2), Child Support, Emergency Assistance, Food Stamps and Food Stamp Employment and Training, Learnfare, Day Care, Community Service Jobs, W-2 Transitions, Job Access Loans, Medical Assistance Eligibility, Refugee Services write or call:

The Wisconsin Department of Workforce Development
Division of Workforce Solutions
ATTN: Equal Opportunity Officer
P.O. Box 7935
Madison, WI 53707-7935

For complaints concerning unsubsidized and trial jobs write or call:

Equal Rights Office
P.O. box 8928
Madison, WI 53708
(608) 266-6860
TDD-Hearing Impaired (608) 264-8752

- Occupational Safety and Health Act (OSHA)
- Unemployment Insurance (UI)
- Anti-discrimination laws, such as the Civil Rights Act of 1964, the American with Disabilities Act, the Age Discrimination in Employment Act, and the Equal Pay Act. See “Employment Discrimination” for more information on enforcing your rights.

Exceptions are likely to include individuals engaged in activities such as vocational education, job search assistance, and secondary school attendance, because these programs are generally not considered employment under the Fair Labor Standards Act. If you are unsure about whether or not you are considered an “employee,” call the USDOL Wage and Hour Division at (608) 264-5221.

Minimum Wage

The Fair Labor Standards Act (FLSA) entitles you to receive workfare benefits in an amount equivalent to the minimum wage (as of July 2009, \$7.25 per hour) for the first 40 hours you work and time and one half for any hours over 40 that you work during the course of a week. While the State may count your welfare benefits toward the minimum wage, you must receive the minimum wage from the State or other employers for all the hours you worked regardless of the amount of your welfare benefits.

Generally, pensions, health insurance, or other benefit payments you receive through your “Workfare” job may NOT be counted toward the minimum wage. Regardless of the benefits you receive, your welfare check and food stamps should still equal at least the \$7.25 multiplied by the number of hours worked during the pay period. See the specific section in the manual for more information about the Occupational Health and Safety Act, Unemployment Insurance, and anti-discrimination laws

If you feel any of your rights are being violated, you should contact the State of Wisconsin Department of Human Services at (608) 266-1865 or talk to your caseworker.

Appealing a W-2 Decision

If you disagree with a decision from the W-2 agency regarding any decision made about your W-2 benefits, child care assistance, emergency assistance, etc., you have a right to request a Fact Finding Review. You must request this in writing to your W-2 agency or caseworker within 45 days of the decision that you think is incorrect. The

fit from it, you must be paid for it.

- There are different Federal overtime laws for hospital, nursing home and residential health care workers, state and local government workers and law enforcement and fire protection personnel.

Some groups not covered by Federal overtime laws include:

administrative and professional workers, commissioned retail workers, farm workers, private domestic workers, some non-profit organizations, federal agencies and truck drivers transporting goods in commerce.

Paycheck Deductions

Your employer usually cannot make deductions from your pay unless you agree to them. For example, before making deductions for safety equipment that you need to perform your job properly, your employer must ask for and receive your agreement. Exceptions include income taxes and Social Security (FICA).

Employers must state clearly on each worker's paycheck, pay envelope or other accompanying paper the number of hours worked, the rate of pay, and the amount of, and reason for, each deduction.

Interpretation of Hours Worked

Employees must be paid for all time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer's premises, on duty or at a prescribed workplace”

Rest Periods

Meal Periods

- The law recommends but does not require that employers provide 30 minutes or more for a meal period.
- Employers must provide at least a 30 minute meal period to all workers under the age of 18.
- No minor may work for more than 6 consecutive hours without a meal period.
- All employers must pay all workers for “on duty” meal periods.
- An “on duty” meal period is when the worker doesn't have at least 30 minutes free from work or is not free to leave the premises of the employer.

- Workers cannot be required to accept employer provided meals as part of their wages

Coffee Breaks

- Coffee breaks are not required by Wisconsin law
- Less than 30 minutes
- There should be no deduction from wages for a coffee break

Bathroom Breaks

- There is no law about the number of bathroom breaks workers are permitted during the course of a shift.
- Occupational Safety and Health Administration (OSHA) requires employers to have a sufficient number of toilets to meet sanitation standards.
- If an employer doesn't have the necessary number of toilets, keeps them locked or otherwise inaccessible, they are in violation of the Federal government's sanitation standards.

Day of Rest

- The "One Day of Rest in Seven" Law guarantees most full-time workers in factories and mercantile establishments at least 24 consecutive hours of rest in each calendar week.
- Certain specific employments are exempt from coverage of this law including janitors, security guards, bakery, dairy, hotel and restaurant workers.
- The days of rest may fall on the first and last days given every seven days so that an employer may legally schedule work for 12 consecutive days within a two week period.

Check a copy of your employee handbook or Union contract to see what the manual has to say about rest periods, meal breaks, and bathroom breaks. If you are being denied the rest periods provided by the handbook or contract, speak to your employer or union representative.

Child Labor

Summary: *Youth under the age of 17 are limited in the number of hours and kind of work they can do. An employer employing minors must usually have a work permit. In certain circumstances, workers under the age of 20 may be paid less than minimum wage.*

WISCONSIN WORKS (W-2) AND YOUR RIGHTS

Summary: Low income parents may qualify for monthly cash payments, job search and job support services through Wisconsin Works (W-2). W-2 offers childcare and transportation assistance as well as work support loans and some training opportunities. Workers who are part of the W-2 program are covered by most basic workplace rights.

In 1996, the Federal government and the State of Wisconsin changed the welfare laws. The Federal Aid to Families with Dependent Children (AFDC) program has been replaced by the Temporary Assistance to Needy Families (TANF) program. Wisconsin's version of TANF is called Wisconsin Works or W-2. The biggest change is that most adults in families who receive welfare are required to work in order to keep receiving their benefits. The "work" can include some limited education and job search. But for most people it will mean either getting a regular job, where you are paid by the employer, or being placed in a "Workfare" job by the welfare agency.

The other significant change is that, even if you are unemployed and have no income, you and your children are not automatically enrolled or guaranteed cash benefits. You may be eligible for welfare benefits, but you are not entitled. However, if you meet the criteria, you are still entitled to food stamps and Medicaid.

To be eligible for W-2, you must be a Wisconsin resident and a U.S. citizen or qualified legal alien. The family's gross income must be at or below 115% of the Federal Poverty Level. W-2 has a lifetime eligibility limit of 60 months. W-2 has work programs ranging from job search assistance and subsidized employment to community service jobs and work transition programs. Participation in the work programs is limited to 24 months each. There are a variety of support services under W-2 including Job Access loans, grants for education and training, transportation assistance and childcare services.

Federal Employment Laws and "Workfare" Participants

The following Federal employment laws apply to those in "Workfare" in the same ways as they apply to other workers:

- Minimum Wage and Fair Labor Standards Act (FLSA).

If your workplace does not already have a union, you can help to start a union organizing drive. If you know which union would represent you, contact a union representative. If you don't know which union is best for your workplace, contact the **South Central Federation of Labor (SCFL) at (608) 256-5111**.

Even if there isn't a union organizing drive at your workplace, **concerted activity** is still protected by the National Labor Relations Act (NLRA), the same set of laws which protect union activity. Concerted activity is when two or more employees take some kind of action together. For example, if a group of employees all march to their supervisor's office to complain about unsafe working conditions, this is protected activity, and those workers cannot be retaliated against.

Union Activity and Legal Protection

Federal law protects your legal right to form a union and participate in union activity.



If there is a union organizing drive where you work it is **illegal** for your employer to:

- Ask you what you think about the union; ask if you have signed a union authorization card, or if you plan to sign one; or ask if you know who has signed union authorization cards, or who is involved in the organizing campaign;
- Promise you, or give you, raises, promotions, or other benefits if you oppose the union;
- Threaten to or actually fire you, lay you off, cut your pay, reduce your hours or benefits, or retaliate in any way because you support the union;
- Discriminate against or treat differently employees that support the union, including disciplinary actions and transfers; or
- Deny the union the right to talk to you or try to prevent you from talking about the union.

Talk to a union representative who is involved in your organizing campaign if you feel your employer has committed one of the violations listed above. They can help you to file an Unfair Labor Practice charge against your employer if you wish to do so. You must file your charge with the NLRB within **6 months** of the date of the incident.

If you have engaged in some kind of concerted activity and have been retaliated against, contact the NLRB.

Most Wisconsin employers hiring minors ages 12-17 years must possess a valid work permit for each minor before work may be performed. In addition, there are restrictions on the types of work minors may do, and on when and how much they may work.

Only high school graduates and other minors who are exempt from attending school may be employed the same hours as an adult.

Permitted Employment

- Youths 12 and 13 years old may be employed only as caddies, in agriculture, domestic services, street trades, school lunch programs, for a parent/guardian who owns a business, as sideline officials for high school football games or other athletic events under the direct supervision of an adult, work in fund-raising sales for nonprofit organizations, public or private schools.
- A worker must be at least 14 years old to work in most non-farm jobs, and at least 18 years old to work in non-farm jobs that could be detrimental to their health and well being.

Work Hours

Youths 14-15 years old may **not** be required to work :

- More than 4 hours per school day (8 hours on non-school days and the last school day of the week)
- More than 18 hours in a week with 5 full days of school.
- More than 24 hours in partial school week

Permitted work times are generally 7am to 8pm on all days that proceed a school day and 7am to 11pm on all days not followed by a school day.

Youths 16-17 years old may **not** be required to work:

- More than 5 hours per school day (8 hours on non-school days and the last school day of the week)
- More than 26 hours in a week with 5 full days of school.
- More than 32 hours in a partial school week

Permitted work times are generally 7am to 11pm on all days that proceed a school day and 5am to 12:30am on all days that are non-school days.

- Following the end of work, 8 hours of rest is required before the start of work the next day
- Work between the hours of 12:30am and 5am must be directly supervised by an adult.

Wages

As of July 24, 2009 there is no longer a separate Wisconsin minimum wage law for minors and minors receive the same \$7.25 per hour wage as adults.

- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage with the permission of the U.S. Department of Labor;
- Minors ages 16 & 17 must be paid time and one-half for work in excess of 10 hours per day or 40 hours per week, whichever is greater.
- Minors ages 14-17 working in agriculture, must be paid time and one-half for work over 50 hours per week during peak periods

There are many occupations that are considered hazardous, psychologically or physically, to minors in which they cannot be employed. For a complete list of these occupations, please visit:

<http://www.legis.state.wi.us/rsb/code/dwd/dwd270.pdf>

For more information on Wisconsin Child Labor Laws call (608)441-5221 or visit: http://www.dwd.state.wi.us/er/labor_standards_bureau/child_labor_laws.htm

Back wages cannot be recovered after two years have lapsed from the date wages were originally due. Therefore, you should file your complaint as soon as you realize that your employer owes you wages.



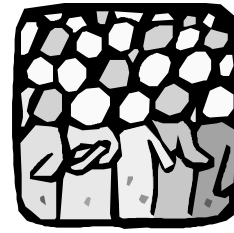
Wage Claims and Enforcement

The U.S. Department of Labor

For all but the smallest businesses, the U.S. Department of Labor (USDOL) enforces the Fair Labor Standards Act (FLSA) – minimum wage, overtime, and child labor laws.

You can contact the U.S. Department of Labor in one of three ways:

1. Call the wage and hour division between 8 a.m. and 4:30 p.m. If you speak Spanish, someone will be available to help you on Fridays from 8 a.m. to 4:30 p.m. If you speak another language, you



UNIONS AND GROUP ACTIVITY

Summary: Workers have the right to form a union in order to negotiate with their employer as a group about wages, hours and working conditions. It is illegal for an employer to retaliate against workers forming a union or workers who act collectively to address a workplace problem.

National Labor Relations Board (NLRB), Region 30 (414) 297-3861

A Union is one of the most effective means of protecting workplace rights. Unions help set standards for wages and working conditions through negotiations and also help protect all kinds of employee rights. Unions are effective advocates not only for enforcing the terms of collective bargaining agreements but also for enforcing various federal and state laws that protect employees.

In most cases, unless you are covered by a union contract, your employer can fire you at any time for any reason or for no reason unless you can show that firing you violates an interest clearly and explicitly recognized by law. Without a Union contract, an employer can also change your wages, hours and working conditions at anytime without your consent unless you can show the change is discrimination prohibited by law.

Your Rights

The National Labor Relations Act gives you the right to:

- **Organize**, form, or become a member of a labor organization; and
- **Collectively bargain** to negotiate a contract with your employer as a group.

Federal law says that every worker has the right to freedom of association and every worker has the right to form a union free from threats, intimidation, or harassment. A union is only as successful as its members make it – you must get involved and support your union for it to be successful. The union is not some outside organization that will come in and solve your workplace problems. You must join together with your coworkers to make your union effective.

the I-9 form with records in DHS and SSA databases. This modifies the I-9 procedure in three ways: 1) the worker must provide a social security number in section 1 of the I-9 form, 2) the employer can only accept a document from list B containing a photo, and 3) if the worker has an I-551 or I-766 form, the employer must make a photo copy of the document.

If you think your prospective employer has committed citizenship status discrimination or document abuse, file a charge with the Office of Special Counsel for Immigrant – Related Unfair Employment Practices (OSC). You must file your charge within 180 days of the discriminatory act. Spanish is spoken and translators are available for many other languages. **Undocumented workers are not protected from discrimination under this law; therefore, they cannot file charges with the OSC.**

U.S. Department of Justice Civil Rights Division

Office of Special Council for Immigration-Related Unfair Employment Practices, NYA

950 Pennsylvania Avenue, N.W.

Washington D.C. 20530

(800) 255-7688

TDD (800) 237-2515

(Translators available for most languages)

- will need to have someone who speaks English assist you.
2. Go to the Department of Labor, Wage and Hour Division office and speak to a representative in person Monday through Friday from 8 a.m. to 4:00 p.m.
 3. Send a letter to the Department of Labor, Wage and Hour Division, describing your problem. Provide a phone number and time that you can be reached.

The USDOL investigates complaints filed by workers regardless of citizenship and immigration status. While the USDOL does not inquire about an individual's immigration status, if the USDOL decides to investigate an employer for wage and hour violations, federal law does require USDOL Wage and Hour Inspectors to examine I-9 forms – the form that indicates work eligibility status – when checking for wage and hour violations. **If the Wage and Hour Investigator finds irregularities, law requires him or her to report such irregularities to Immigration & Customs Enforcement (ICE).** ICE may or may not pursue cases referred to it by the USDOL.

U.S. Department of Labor, Wage & Hour Division (608) 441-5221

The Wisconsin Department of Workforce Development

To file a complaint, or to find out more information, contact the Labor Standards Division of the Wisconsin Department of Workforce Development. Offices are open from 7:45 a.m. to 4:30 p.m., Monday through Friday.

To file a wage claim, you must use a form furnished by the department's Equal Rights Division. This form may be obtained in person at the Madison office, or by mail. The procedure for processing wage claims is done via written responses and documentation only. Offices are open from 7:45 a.m. to 4:30 p.m. Monday through Friday. Spanish speakers are usually available. If you speak another language, the department may be able to arrange for a translator at a later date.

The form for filing a complaint or wage claim is available online at http://www.dwd.state.wi.us/er/labor_standards_bureau

**Wisconsin Department of Workforce Development
Equal Rights Division (608) 266-6860**

UNEMPLOYMENT INSURANCE



You may be eligible for unemployment benefits if you lose your job or are forced to quit. The amount paid will be based on past earnings. To be eligible you must be physically able and available for full-time work. To continue to receive benefits, you must prove you are looking for work. Filing for unemployment benefits can be done by phone or online. If your claim is rejected you may appeal in writing.

Eligibility

If you lose your job or are forced to quit, you may be eligible for Unemployment Insurance (UI). **You may not be eligible if you are “at fault” for losing your job.** Examples of being “at fault” may include:

- Deliberate and repeated misconduct, such as chronic absence or tardiness without a good explanation, sleeping on the job, or violating other workplace rules.

Note: It is **not** enough that you were careless or negligent on the job, that you arguably used poor judgment, or that you accidentally damaged some of your employer’s property. Generally, misconduct must be purposeful and, unless it is very serious, must have happened more than one time.

- You refused to accept a similar job without good reason.
- You quit your job without good reason.

A number of reasons are usually considered good enough for you to quit your job and still be eligible for UI:

- Some sort of fraud was involved in recruiting you for the job. (*Example:* certain wages were offered when you were hired, but once you started working your wages were reduced.)
- Your life or health was endangered by the employer’s failure to maintain a safe workplace.
- The nature of the work changed dramatically from what you had originally been hired to do.
- You were subjected to some intolerable or illegal condition on the job, such as discrimination or sexual harassment.
- You were hired to work a particular shift, but then required to transfer to another shift that would result in a lack of childcare for minor children. *Note:* In Wisconsin, you will generally not be eligible for UI if you left your job because childcare arrangements fell through, you did not have transportation, etc.

Reverification and Social Security No-Match Letters

An employer is required to reverify a worker’s employment eligibility only when the information the employee provided on the I-9 form indicates his or her work authorization is about to or has expired. Additionally, an employer who is audited by the INS and informed that there is a discrepancy with some of its workers’ documents must also reverify those workers’ documents. Once a worker has filled out an I-9 form, he or she is considered to be a “continuing employee” and therefore is not required to fill out a new I-9 form or to show his or her documents again, except for reverification.

Problems about legal work status sometimes arise when an employer receives a Social Security Administration no match letter. The Social Security Administration (SSA) periodically sends letters to employers listing information from employer-provided W-2’s that do not match the SSA’s records concerning an employee’s name, date of birth, sex or social security number. These letters sent by the SSA are intended solely for the purpose of making sure that social security contributions are being credited to the proper accounts.

Some Employers, though, have interpreted these letters as proof that workers are undocumented. Unrecorded name changes and data entry errors are just two of many reasons why employees might show up as a no-match. SSA is not responsible for tracking down undocumented immigrants and is not giving employers this information for that purpose.



Immigration laws strictly limit when an employer may ask to review an employee’s work authorization or identity documents. Employers are not allowed to ask to see such documents upon receiving a Social Security Administration no match letter. If a worker believes an employer has engaged in unlawful reverification, the worker should first contact their union, if they are represented by one, or an immigrant worker advocate. If the advocate determines that the worker might be a victim of document abuse or citizenship or national origin discrimination, the advocate can assist the worker in filing a charge with the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

E-Verify. Your employer may participate in an electronic employment eligibility verification system called e-verify. This requires the employer to submit an inquiry that will compare worker information on

- School ID with Photo
- Voter's Registration Card
- U.S. Military ID or Draft Card
- Canadian Driver's License
- Native American Tribal document
- Federal, state, or local government ID with photo or personal information including name, date of birth, gender, height, eye color and address
- Military Dependent's Identification Card
- United States Coast Guard Merchant Mariner Card

(If you are under 18 and unable to produce the above documents, you may also choose 1) a school report card or school record, 2) a clinic, doctor or hospital record, or 3) a nursery school or day care record.)

Group C – work authorization

- Native American Tribal document
- U.S. Birth Certificate issued by a state, county, municipal authority, or territory with official seal
- U.S. Citizen ID (I-197)
- ID card for use of resident citizen in U.S. (I-179)
- Social Security Card (unless stamped "not valid for employment")
- Certification of Birth Abroad of U.S. Citizen (FS-545 or DS-1350)
- DHS document authorizing employment

You may choose which legally acceptable documents you want to show to your employer. **Your employer cannot make you show particular documents or more than the legally required number of documents just because he or she wants to see them.** If your employer makes you show more documents than are legally required or rejects valid documents that appear genuine, your employer may have committed document abuse. An employer should not ask to see your documents prior to the interview or selection process. If you have already provided documents for an I-9 form, an employer cannot ask you to see them again simply because the I-9 requirements have changed.

Generally, undocumented workers are **not** eligible for UI, but you may want to consult an attorney to discuss your situation.

To be eligible for UI benefits, you must be physically able and available for **full-time** work. You must also prove that you are looking for work. An easy way to do this is to **keep a list of the employers you contact, including their names, addresses, phone numbers, and the dates that you contacted them.**

How To Apply for Unemployment Insurance

Your initial claim application *must* be filed in the week you want your claim to begin. Wisconsin does not have a waiting period. To apply, contact the **Department of Workforce Development, Unemployment Insurance Division** using the contact information below.

To File a New Claim or to Reopen an Existing Claim:

Online: www.ucclaim-wi.org

By Telephone: 608-232-0678 (Madison)
414-438-7700 (Milwaukee)
1-800-822-5246 (Toll-free)

To File a Weekly Claim Certification for a Benefit Check:

Online: www.ucclaim-wi.org

By Phone: 608-261-9990 (Madison)
414-438-5395 (Milwaukee)
1-800-978-7887 (Toll-free)

How to Prepare

You must have the following information ready before filing an initial claim online or by phone:

- Your Social Security Number;
- Your Personal Identification Number (see below);
- Your Wisconsin driver's license number, if you have one; and
- A list of employers for whom you worked in the past 18 months, their complete addresses, telephone numbers and the first and last date you worked for each of them.

Personal Identification Number (PIN)

Your PIN is a 4-digit number that you make up before filing a claim. Your PIN identifies you and protects you from having another person file your claim or obtain information about your claim. You are responsible for your PIN. Do not share your PIN with anyone.

After Your Initial Claim Has Been Filed...

You will receive a claim confirmation form and handbook in the mail

- If you qualify for UI benefits, you will receive Form UCB-700 that tells you the amount of benefits you can receive and how that amount was computed.
- If you do not qualify for UI benefits, you will receive a form that explains how your ineligibility was determined.

You must file a claim certification **each week after you file your initial claim**. This can be done online or by phone (see previous page).

- If there is a break of a week or more in filing claims and you want to file again, you must call the initial claims number above and speak with a Claims Specialist to restart your claim.

How to File an Appeal

If your claim is denied, you may challenge the decision by filing an appeal **by the date stated on the decision** mailed to you. **During this period, you MUST continue to file weekly claims.** Otherwise, you will not receive any benefits, even if you win the appeal.

- **Your appeal must be in writing**, but it does not have to be long. A single sentence, such as “I am writing to appeal the initial determination.” is usually enough.
- Include a **copy of the decision** or **identify it by its nine-digit number** located in the upper left-hand corner of the page.
- Include your **name, social security number, the name of your place of employment**, and your **actual worksite address**.
- Include dates and times when you and your witnesses and representatives cannot be available for a hearing.
- Indicate any **special needs** such as an interpreter or other accommodations needed due to disability.
- **You, your agent, or your attorney must sign the appeal.**
- The appeal should be **delivered** during office hours, **mailed**, or **faxed** to the hearing office listed on the back of the determination under WHERE TO FILE AN APPEAL.

Where to Get More Information

The **Unemployment Appeals Clinic** (1602 S. Park St., Room 106 Madison, WI 53715) offers free assistance with UI appeals, Mondays 7-9 p.m. For an appointment call 211 or (608)-246-4357 or e-mail uwuac@rso.wisc.edu.

Extensive information about UI appeals and the hearing process can be found at: <http://dwd.wisconsin.gov/dwd/publications/ui/hearing.htm>.

affects your employment opportunities.

If you think you have been discriminated against on the basis of national origin, contact the Equal Employment Opportunity Commission or other relevant state or local agencies.

Citizenship discrimination occurs when an employer refuses to hire you, fires you, or a recruiter refuses to refer you for a job because of your citizenship or immigration status. If you have legal work papers, the law protects you against discrimination based on citizenship. For example, it is illegal for an employer to hire only U.S. citizens or only workers with green cards, unless required to do so by law, regulation, or government contract. There is an exception in law for security clearances, defense contractors, and government work.

The same law that protects you against citizenship discrimination also requires employers to make sure that workers are legally eligible to work. To do this, the employer must fill out a special form for each person hired. The form is called the I-9 Employment Eligibility Verification Form.

In order for your employer to fill out the I-9 form, you must provide documents that prove your identity and your employment eligibility. Documents are grouped in three categories. You can choose **one document** from Group A because it shows both your identity and your eligibility to work. Or you can choose **two documents**: one from Group B, which shows identity, and one from Group C, which shows eligibility to work. **Expired documents are no longer acceptable.**

Group A – Identity and work authorization documents:

- Unexpired U.S. Passport or Passport Card
- Unexpired Foreign Passport with I-551 stamp or temporary I-551 printed notation on machine-readable immigration visa.
- Alien Registration Receipt Card or Permanent Resident Card (INS Form I-551)
- Unexpired Employment Authorization Document issued by the INS which contains a photograph (INS Form I-766)
- Unexpired Foreign Passport with Form I-94 containing an endorsement of the alien's nonimmigrant status. (*For aliens authorized by the INS to work only for a specific employer.*)
- Passport from Federal States of Micronesia or the Republic of the Marshall Islands with unexpired I-94 or I-94A form.

Group B – Identity

- Driver's License or State ID with photo or personal information including name, date of birth, gender, height, eye color, and address

treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Examples of violations under the Civil Rights Act include:



- **Refusal to Employ**

- An employer cannot deny you employment based on your ancestry or national origin. Likewise, an employer cannot request more documentation of your citizenship status than you are legally required to produce simply because of your appearance, language, accent, or any other attributes which are suggestive of national origin. Such a request by your employer may constitute document abuse.

The Immigration Reform and Control Act (IRCA)

The IRCA prohibits the hiring of unauthorized workers, but it also prohibits employers from treating persons differently because they are foreign-born, “foreign-looking”, have “foreign-sounding” names, or speak with an accent. Work authorization documents must be reviewed for all applicants, not just those who appear to be foreign or whose primary language is not English.

- **English-Only Rules**

- An “English Only” rule requires employees to speak only English in the workplace. Your employer must demonstrate that an “English Only” rule is necessary for business. Otherwise, such a rule may constitute discrimination based on ancestry or national origin. If your employer believes that an “English Only” rule is necessary for business purposes, he or she must tell you when you must speak English and the consequences of violating that rule.
- An “English Only” rule may be used if it is needed to promote the safe or efficient operation of the employer’s business

Harassment

Your employer bears the responsibility of keeping your workplace free of harassment based on your ancestry or national origin. Ethnic slurs, jokes, or other verbal or physical conduct relating to your national origin are harassment when such behavior causes you to feel intimidated or offended, interferes with your ability to do your job, or otherwise

DISABILITY COMPENSATION

If you are unable to work because of an injury or illness unrelated to your job, you may be eligible for disability benefits from Social Security. You may also be eligible for benefits through disability insurance if you are covered by your employer’s private insurance plan.



Disability Benefits: Overview

Workers who have been unable to work due to injury or illness may qualify for disability benefits. There are **three kinds** of disability benefits: Social Security Disability, Supplemental Security Income and private disability insurance.

How does the Social Security Administration (SSA) define “disabled”?

- You must be unable to do any “substantial gainful activity” because of a physical or mental impairment; and
- Your impairment must have lasted, or be expected to last, over 1 year or be expected to result in your death.

Note: If you consistently earn over \$980 per month, you are performing “substantial gainful activity.” Also, note that you cannot get disability benefits solely because your doctor says you are disabled.

Social Security Disability (SSD) pays cash benefits to people who are unable to work due to a disability. Benefits continue until a person is able to perform substantial gainful activity on a regular basis. If you do not receive workers’ compensation and you meet the following eligibility requirements, apply for SSD.

Eligibility for Social Security Disability

To qualify for disability benefits from Social Security:

- You must have worked long enough to earn enough “Social Security Credits.” (Call your local SSA Office to determine if you have enough credits);
- You must become disabled within a specified period from the date you last worked. (Call your local SSA office to determine your “date last insured.”)
- You must be “disabled” according to the definition above.

In most cases, disability benefits will begin with the **sixth** full month of your disability. If you receive workers’ compensation, it is likely that you will **not** be eligible for any Social Security Disability benefits.

Supplemental Security Income (SSI) is a need-based program for people who are disabled, blind, or elderly. SSI is a source of income for people who have never worked (like children) or who have not worked long enough to get SSD.

Eligibility for Supplemental Security Income

To qualify for disability benefits from SSI, you must:

- Have an income below a certain limit. (Call your local SSA office to learn the limit for your state);
- Have less than \$2,000/person or \$3,000/couple in assets; and
- Be a U.S. citizen or national.

Note: Some documented immigrants **do** qualify for SSI. Call your local Social Security office to find out if you qualify.

People who qualify for SSI usually qualify for food stamps and Medicaid as well. If you receive workers' compensation, it is likely that you will **not** be eligible for any Supplemental Security Income.

How to Apply for Social Security Benefits

If you become disabled, you should apply for disability benefits **as soon as possible** because it can take several months (or longer) to process a claim. Contact the **Social Security Administration** for more information or to find the Social Security office nearest you.

Apply by Phone: The Social Security Administration
1-800-772-1213

Apply Online: www.socialsecurity.gov/applyfordisability

Apply In Person: SSA—Madison Office
6011 Odana Rd
Madison, WI 53719-1101
608-270-1141

To speed up your SSD Claim, have the following information ready when you apply:

- Names, addresses, phone numbers, and fax numbers of your doctors, therapists, caseworkers, clinics, and hospitals;
- Names of all medications you are taking; and
- Names of your employers and job duties for the last 15 years

Filing an Appeal

If you are denied benefits, you can **request reconsideration** within 65 days of the date of the decision. If you are denied benefits at this stage, you may request a hearing in front of an **Administrative Law**

RELIGIOUS DISCRIMINATION

The **Civil Rights Act of 1964** prohibits employers from discriminating against you because of your religion in terms of hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. This Act applies to private employers with **15 or more workers**, as well as state and local governments, employment agencies, and labor unions.

For example, an employer may NOT:

- Schedule examinations or other selection activities in conflict with a current or prospective worker's religious needs;
- Inquire about an applicant's future availability at certain times;
- Maintain a restrictive dress code; or
- Refuse to allow observance of the Sabbath or a religious holiday;

Employers must reasonably accommodate the religious practices of an employee or prospective employee, *unless doing so would create an undue hardship upon the employer*. An employer can claim undue hardship when accommodating an employee's religious practices requires more than the ordinary administrative costs or jeopardizes seniority systems. Examples of employer accommodation include:

- Flexible scheduling;
- Voluntary substitution or swaps of schedules or responsibilities;
- Job reassignments; and
- Lateral transfers

CITIZENSHIP DISCRIMINATION AND DOCUMENT ABUSE

Every day, many people legally authorized to work in the United States are unfairly denied jobs because they look or sound "different," because they are not U.S. citizens, or because of their ancestry or national origin. Under the **Civil Rights Act of 1964**, it may be illegal for a private employer with **15 or more employees** to deny you employment because of your ancestry or place of origin, or because you have the physical, cultural, or linguistic characteristics of a particular racial or ethnic group.

National origin/citizenship discrimination means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background. National origin discrimination also means

workers or jobs so that certain jobs are generally held by minorities;
or

- **Code applications and resumes** to designate an applicant's race. Such coding is evidence of discrimination where minorities are excluded from employment or from certain positions.

Race-Related Characteristics Or Conditions

Discrimination on the basis of a characteristic associated with race – such as skin color, hair, texture, or certain facial features – violates the Civil Rights Act of 1964. It is also illegal to discriminate on the basis of a condition which predominantly affects a race unless the practice is job-related and consistent with business necessity. For example, since sickle-cell anemia predominantly occurs in African-Americans, a policy that excludes individuals with sickle-cell anemia must be job-related and consistent with business necessity.

Are There Any Exceptions To The Law?

There are some exceptions to the law. The law permits an employer to legally consider a person's race or national origin in a few very narrow exceptions:

- **Affirmative Action**
 - A formally adopted affirmative action plan *may* permit an employer to consider race or national origin in the job selection process.
- **Counselor**
 - An employer seeking a staff counselor, mentor, or role model for a group of teens having a certain cultural or ethnic background *may* be able to demonstrate a business necessity for hiring a person from such cultural or ethnic background.
- **Actors or Models**
 - In some cases, an employer may hire persons with certain racial or ethnic characteristics for the purposes of authenticity or another business necessity.

The Immigration Reform and Control Act (IRCA)

The IRCA prohibits the hiring of unauthorized workers, but it also prohibits employers from treating persons differently because they are foreign-born, "foreign-looking", have "foreign-sounding" names, or speak with an accent. Work authorization documents must be reviewed for all applicants, not just those who appear to be foreign or whose primary language is not English.

Judge. Appeals must be **received** by the SSA within the deadlines.

Private Insurance

Find out if your employer has disability insurance through a private insurance company. If so, you may be able to receive disability benefits from that insurance plan.

WORKERS' COMPENSATION

If you are hurt at work or become sick because of your job, you are entitled to have your medical expenses covered and a portion of your lost wages paid.



Worker's Compensation Laws

Under Wisconsin Workers' Compensation laws, workers who become ill or injured as a direct result of their job are eligible to get a weekly check from their employer's Workers' Compensation Insurance to cover their medical expenses and a portion of their lost wages. If your employer harasses or fires you because you have filed a Workers' Compensation claim, he could face a variety of penalties.

All compensation and medical payments are based on medical support from your doctor. Upon written request, the worker **must** allow an examination by a doctor named by the employer or Workers' Compensation Carrier. Workers are entitled to copies of all examination reports prepared by an employer's physician.

What types of injuries are covered?

Worker's Compensation covers mental harm, physical harm, or death caused by accidents or occupational diseases. It may also cover the aggravation of preexisting physical conditions.

- *Note:* the term occupational disease under Wisconsin law is defined as a disease that is acquired as the result of working in an industry over an extended period of time.

Worker's Compensation also covers damage to artificial members, dental appliances, teeth, hearing aids, and eyeglasses.

- *Note:* hearing aids and eyeglasses are covered only if they are damaged by an accident that also caused personal injury entitling the employee to compensation for either disability or treatment.

If you work only in one place, such as a factory, store or office, your

injury will usually be covered only if it occurs at work. If your work requires travel, you are covered at all times while traveling, including the time you are eating or sleeping, unless you deviate from regular work duties for a private or personal reason.

Exceptions

Generally, Workers' Compensation is **not** paid for injuries incurred while a worker is doing something of a strictly private nature, injuries received from provoking a fight or engaging in horse-play, or self-inflicted injuries.



Types of Claims

There are four types of WC claims:

Temporary Total Disability (TTD)

- Paid during period of treatment and healing.
- Paid before permanent disability is determined.
- Paid if there is a total loss of wages, either because the worker is unable to do any kind of work, or because the employer is unable to provide work within limitations set by the doctor.
- Almost all workers' compensation cases are initially for temporary total disability.

Temporary Partial Disability (TPD)

- Paid when a worker sustains a wage loss.
- Paid when the worker is offered a wage reduction because of the disabling effects of the injury or disease during the healing period.
- Paid in proportion to the wage reduction.

Permanent Total Disability (PTD)

- Paid when extremely serious injury prevents worker from performing any gainful employment.
- Weekly benefits are paid for life; the amount of payment depends on the severity of the permanent disability.
- Permanent total injuries are the loss of both eyes, the loss of both arms, the loss of both legs, the loss of an arm and a leg, and other extreme conditions determined by the Division of Workforce Development to prevent the injured worker from working.
- If a work-related accident causes a worker's death, his/her spouse and children are entitled to compensation

Permanent Partial Disability (PPD)

RACE AND COLOR DISCRIMINATION

The **Civil Rights Act of 1964** protects individuals against employment discrimination on the basis of race and color. **It is illegal for an employer to discriminate against you because of your race or color in terms of hiring, termination, promotion, compensation, job training, or any other condition of employment.** Your employer may not base decisions about your work assignments on stereotypes and assumptions about abilities, traits, or the performance of your racial group. The Act applies to private employers with **15 or more workers**, and to federal, state, and local governments. The Act also applies to employment agencies and labor unions.

The Act not only prohibits intentional, direct discrimination, but ALSO neutral job policies that disproportionately affect persons of a certain race or color and that are not related to the job and the needs of the business. Employers should adopt "best practices" to reduce the likelihood of discrimination and address barriers to equal employment opportunities.

It is **ALSO** illegal for an employer to discriminate against you because of:

- Marriage to, or association with, an individual of a different race;
- Membership in, or association with, ethnic-based organizations or groups; or
- Attendance or participation in schools or places of worship generally associated with certain minority groups.

Harassment

Ethnic slurs, racial "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race or color constitutes unlawful harassment if the conduct creates an intimidating, hostile, or offensive working environment, or interferes with the individual's work performance. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.

Segregation And Classification of Workers

Employers may NOT:

- **Physically isolate** minority workers from other workers or from customer contact;
- **Routinely assign** primarily minorities to predominantly minority establishments or geographic areas;
- **Exclude** minorities from certain positions or groups or categorize

that is the result of gender discrimination. This Act is retroactive, and applies to all claims of discriminatory compensation pending or filed on or after May 28, 2007.

Examples of Gender Discrimination In Employment

- You were “steered out” of better paying jobs because the employer assumed you were interested only in “women’s jobs.”
- An employer asked you if you were married or planned on marrying, if you had children or planned on having children, and then refused to hire you or place you in certain jobs.
- You were hired for a job at a lower pay rate than a man would have received.
- You returned from pregnancy or maternity leave to a lower-paying job than when you left.
- You trained a man for a job you had been denied previously.

In Wisconsin And Madison: A Few Important Facts:

The victim of harassing behavior does NOT always have to confront the alleged harasser in order to establish that the behavior is unwelcome. Expressing an objection is not required where any reasonable person would find the behavior offensive. However, in employment, the victim has to report the behavior to a member in management in order for the employer to be liable if the situation is not corrected. Or, the victim must be able to demonstrate that the employer knew or should have known about the harassment. Offenders can be supervisors, co-workers, owners, or third-party individuals (such as associates, vendors, delivery persons, clients). A person that consents to the advances may still be a victim of sexual harassment if he/she later rejects more advances or refuses to participate in the behavior. Non-sexual, abusive, hostile, or rude treatment of one individual or group may still be harassment.

- Paid after the healing period.
- Paid if the worker has limitations which are expected to remain unchanged in the future.

Who pays the bills?

Your employer is required to pay your medical expenses and mileage. Send any bills you receive to your employer or its insurer. If you paid any of your medical expenses, send itemized receipts to your employer or its insurer for reimbursement.

Always keep a copy of any bills, medical records, letters, or receipts that you receive!

How is compensation paid?

- While you are healing from your injury, you will get two-thirds of your weekly wage, up to \$808 a week.
- There is a three-day waiting period before benefits can be paid. You do not receive compensation for these three days if you are disabled for seven days or less. If you are disabled for more than seven days or there is permanent disability, you will receive compensation for the first three days.
- Worker’s Compensation is never paid for the day of injury.
- In most cases, the first payment will be made by the insurance company within 14 days of your last day worked.

Steps for obtaining Workers’ Compensation:

If you are hurt at work or become ill because of work related exposure:

- ✓ **Immediately report your accident** to your supervisor.
- ✓ **Seek first aid** and medical attention.
- ✓ **Tell your doctor exactly how you got hurt.** If the doctor recommends work restrictions, get them in writing.
- ✓ **It is your employer’s responsibility to report your injury or illness** to his/her insurance carrier or claims administrator. The insurance carrier will then report your injury or illness to the Wisconsin Workers’ Compensation Division.
- ✓ **Keep your own records** of the accident and any physical conditions, such as a wet floor that may have contributed to your accident. Also keep copies of all legal documents and correspondence.
- ✓ **Keep your employer informed** about any *changes* in your injury.

Do I need a lawyer?

It is a good idea to contact a lawyer if:

- Your doctor and the company doctor disagree;
- You are asked to sign a document or give a statement;
- You can't return to work because of your injury; or
- It has been over 2 weeks since your accident and you have not received any benefits.

Note: Lawyer's fees are charged in WC cases **only if the claim is successful**. Lawyers are allowed to charge 20% of the amount in dispute.

Where can I get more information?

Contact the **Wisconsin Department of Workforce Development**, Workers' Compensation Division-Madison Office at **(608) 266-1340** or visit their website at <http://dwd.wisconsin.gov/wc/workers>.



FAMILY AND MEDICAL LEAVE

Under Federal or State law, a worker may have a right to unpaid leave for the birth or adoption of a child, a serious medical condition, or a family member's serious medical condition. Upon returning to work, the employee has the right to the same or similar position. During leave, the employer must continue to make benefit contributions.

Federal Law

The Federal Family and Medical Leave Act (FMLA) allows workers up to **12 work weeks of unpaid leave** for the following reasons:

- A serious health condition that makes a worker unable to perform his or her job;
- The birth of a worker's natural child;
- Placement of a child with a worker for adoption or foster care; and
- To care for a spouse (including a common-law spouse), child, or parent (but **not** "parent-in-law") with a serious health condition.

The law does not require your time off to be paid, although some companies have policies that allow you to be paid when you take time off under the FMLA.

Your employer **must** continue to provide the same health insurance

- The FMLA requires federal, state, and local government employers, as well as private employers with 50 or more workers, to grant eligible female workers up to 12 weeks of unpaid pregnancy leave. If other workers who can't do their jobs for short periods of time are given easier duties, you should also be given easier duties if your pregnancy prevents you from being able to do your job. Likewise, any short-term disability leave policy that your company offers to injured or ill workers must be offered to you as well.

Gender-based Wage Discrimination

The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. Under the Equal Pay Act, it is illegal for employers with at least 15 workers to:

- Pay women less for work similar to that performed by men who have the same employer;
- Withhold training opportunities from women workers that are offered to men;
- Refuse to consider promoting women to higher-paid managerial or professional positions; or
- Set lower wages for "women's jobs" than for "men's jobs" that require equal skill, effort, responsibility, and working conditions, because women will "work for less" or because "the job market" allows lower wages for women.

This law protects women who work in the same types of jobs that men do for the same employer. About half of all women work in "women's jobs" that have traditionally been filled by women but where there are few or no men. Unfortunately, the law does NOT protect these women very well because comparisons between men and women are more difficult.

Lilly Ledbetter Fair Pay Act of 2009

In January 2009, President Obama signed the **Lilly Ledbetter Fair Pay Act of 2009**. Under this Act, each paycheck that delivers compensation that is gender discriminatory is illegal under federal law, regardless of when the discrimination began. Under the Act, an individual subject to compensation discrimination because of their gender has **180 days (or 300 days if the state allows for 300 days for such a complaint)** to file a complaint after any of the following:

- discriminatory compensation or discriminatory practices affecting compensation is adopted
- when the individual is affected by the discriminatory compensation
- when the individual's compensation is affected by discriminatory compensation, including each time the individual receives compensation

- **If You Are Being Sexually Harassed:**

- Tell the harasser to stop. Clearly tell the harasser that you do not want such sexual attention. If it happens again, send a letter telling your harasser to stop, and keep a copy for yourself.
- Keep clear records of each incident of harassment.
- Get support from friends, family, and co-workers. Find out if other co-workers have the same problem. Join together to take these steps toward ending the sexual harassment.
- Talk to your employer. Find out if your employer has a sexual harassment policy and carefully follow the steps of that policy.
- If you are in a union, talk to your union representative. Check the union contract for a sexual harassment policy.
- Keep clear records of your job performance. Keep all evaluations and memos relating to your job performance. The harasser might question your job performance in order to defend such behavior.
- File a charge with the Equal Employment Opportunity Commission (EEOC), or the Wisconsin Department of Workforce Development (DWD), or the Madison Equal Employment Opportunities Commission (MEOC).

Pregnancy Discrimination

- The Pregnancy Discrimination Act prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.
- Examples of pregnancy discrimination:
 - An employer refuses to hire a woman because she is pregnant;
 - An employer fires a worker or forces her to leave because she is pregnant;
 - An employer takes away credit for previous years, accrued retirement benefits, or seniority because of maternity leave;
 - An employer fires or refuses to hire a woman because she had an abortion.
- If you are unable to work because of complications with your pregnancy, you are entitled to the same rights, leave privileges, and benefits as other workers who are out of work for a short period of time due to other disabilities. If your doctor or health care provider says you are sick and unable to work during some or all of your pregnancy, you may be able to take up to 12 weeks off without pay under the Federal **Family and Medical Leave Act (FMLA)**.



during the leave as was provided while you were working. Workers are also entitled to the same or an equivalent job in terms of pay, benefits, and conditions of employment upon returning to work.

Eligibility under the Federal FMLA

To be eligible for leave under the FMLA, you must:

- Work for an employee who employs at least 50 employees within 75 miles of your worksite;
- Have worked for your employer for at least 52 weeks (this need not be 52 consecutive weeks); and
- Have worked at least 1,250 hours in the last 12 months.

Intermittent or Reduced Leave

You do not have to use all 12 weeks of leave at once. You may take *intermittent leave* or *reduced leave* instead.

- **Intermittent leave** is time off taken in separate blocks. You can use intermittent leave for things such as doctor appointments to care for a serious health condition.
- **Reduced leave** reduces your number of working hours. For example, if your doctor instructs you to work half-time following surgery, your employer is required to follow this schedule for up to 24 weeks (equivalent to 12 weeks of full-time work).

Wisconsin Family Medical Leave Act (WFMLA)

Employers must comply with any provisions of State or local law that provide greater family or medical leave rights than the rights established by the Federal FMLA. Therefore employers covered by both Federal and State FMLA must comply with the provisions of both.

Under the Wisconsin FMLA, a worker can take:

- Up to 6 weeks of leave for the birth or adoption of a child;
Note: The WFMLA does **not** include leave in connection with placement of a child for foster care.
- Up to 2 weeks to care for a parent (**including “parent-in-law”**), child, or spouse (legal husband or wife only) with a serious health condition; and
- Up to 2 weeks for his/her own serious health condition.

The Wisconsin FMLA has several provisions that differ from the Federal FMLA. For example:

- WFMLA does **not** have exemptions for salaried or key workers. Therefore, even a worker who might be excluded under Federal FMLA could take advantage of WFMLA if eligible.

- WFMLA does **not** have exemptions for salaried or key workers. Therefore, even a worker who might be excluded under Federal FMLA could take advantage of WFMLA if eligible.
- WFMLA has less stringent guidelines for making a leave request.
 - Federal law requires 30 days notice when possible.
- Wisconsin law only says notification should be made in advance “in a reasonable and practicable manner.”
- Under WFMLA, a worker is allowed to take intermittent leave for birth and adoption in increments equal to the shortest increment permitted by the employer for any other non-emergency leave.
- WFMLA has no military-specific family leave provisions.
- WFMLA does not cover leave for foster care placement.
- WFMLA lets workers choose whether to use paid or unpaid leave of any type provided by the employer to the worker.
 - Under Wisconsin law, an eligible worker could choose to use accumulated vacation or paid sick time or he could choose to save that paid time for later.
 - Under Federal law an employer can require that a worker use accrued paid leave.

Eligibility under the Wisconsin FMLA

To be eligible for FMLA under Wisconsin law, a worker must:

- Work for an employer with at least 50 permanent workers during at least 6 of the preceding 12 calendar months;
- Have worked for 52 consecutive weeks for an employer; and
- Have worked at least 1,000 hours in the prior 12 months.

Steps for obtaining medical leave

- ✓ Submit a request **in writing** to your employer as soon as you know you will need leave time.
 - Give your employer 30 days notice, if possible. Explain that you need to take time off for medical reasons.
 - Keep a copy of your request for your records.
 - **Note: You do not have an obligation to designate whether the leave you are taking is Federal or State FMLA leave.**
- ✓ Your employer must provide you with a written notice of your rights and responsibilities while on leave.
- ✓ Obtain and keep copies of relevant medical records
- ✓ Keep copies of all documents that you submit to or receive from your employer.
- ✓ Be sure your employer knows the law. If your employer denies your request, you may want to talk to him/her about the law.

Tel: (608) 267-8635

TTY: (866) 704-2314

Fax: (608) 266-6514

abennett@cityofmadison.com

www.cityofmadison.com/dcr

GENDER DISCRIMINATION



The federal **Civil Rights Act of 1964** protects individuals against employment discrimination on the basis of gender. This law applies to all employers with **15 or more** workers, and to all state and local governments.

It is unlawful to discriminate against any worker or applicant for employment because of his/her gender in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. The Act also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of gender and that are not job-related.

Gender-based discrimination includes:

Sexual Harassment

- Direct requests for sexual favors, also called “**Quid pro quo**” sexual harassment. This occurs when a supervisor conditions job benefits on submitting to unwelcome sexual conduct or punishes a worker for refusing to participate in such conduct.
- Workplace conditions that create a hostile environment for persons of either gender, is sexual harassment. The discrimination in this case must be severe and pervasive.
- Examples of sexual harassment:
 - You have to go along with a supervisor’s sexual advances to get hired or to keep a job, or to get a raise or a vacation, or to influence other decisions about your job;
 - Behavior such as touching, making sexual remarks, asking for sex, or making sexual advances is so severe and pervasive that it is very difficult for you to perform your work.
- Federal law may protect you:
 - Even if no-one witnessed the harassing behavior;
 - Even if the harassing behavior does not threaten or cause you to lose your job;
 - Regardless of whether it is a boss, co-worker, or client who harasses you; and even if the harassment occurred only once

- Training
- Lay-offs and firing
- Other employment-related actions
- Retaliation for acting against discrimination
- Harassment on the job because of a disability

AIDS is a disability under the law and no person may be discriminated against because of this disease

Alcoholism and drug addiction are disabilities under state law, and a person cannot be discriminated against for these reasons, likewise, a person who is recovering from alcoholism or drug addiction or who is in a supervised rehabilitation program cannot be discriminated against

Can an employer refuse to hire somebody because of their disability?

A person with a disability may be passed over if the disability is reasonably related to the person's ability to adequately and safely perform job-related duties. An employer may consider if a person's disability would constitute a hazard to the safety of the person, coworkers, or the public. However, an employer may not assume a hazard exists because of a person's disability and must typically establish through objective or medically-supported evidence that a significant risk of substantial harm would occur. An employer has a legitimate interest in maintaining a safe workplace, but may not generalize rejection of persons with disabilities. If a hazard is found to exist, an employer has a further duty to determine if a reasonable accommodation can be made to reduce the hazard to an acceptable level.

In Madison:

Madison's Disability Rights and Services Program ("DR&SP") is the part of the City Department of Civil Rights that serves city residents with disabilities. This program is designed to coordinate with the federal ADA and the Wisconsin Fair Employment Law. The Disability Rights Coordinator works with all city departments to assure their compliance with the ADA. The coordinator also intakes, investigates, and resolves all disability-based complaints from users of **city services**.

**The Disability Rights and Services Program Coordinator
Department of Civil Rights
210 Martin Luther King, Jr. Blvd., Rm. 523
Madison, WI 53703-3346**

How to File a Complaint

If you believe that your employer is violating the **Federal FMLA**, you have **two years** to file a complaint with the U.S. Department of Labor—Wage & Hour Division.

U.S. Department of Labor—Wage & Hour Division

By Phone: 1-866-487-9243
608-441-5221 (Madison)

Online: <http://www.dol.gov/whd/fmla/>

If you believe your employer is violating the **Wisconsin FMLA** you have just **30 days** to file a complaint with the Department of Workforce Development—Equal Rights Division.

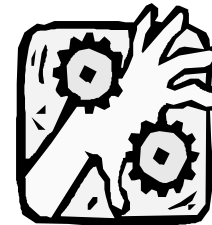
Department of Workforce Development—Equal Rights Division

By Phone: 608-266-6860 (Madison)
414-227-4384 (Milwaukee)

Online: <http://www.dwd.state.wi.us/er/>

Where to Get More Information

Contact the **U.S. Department of Labor—Wage & Hour Division** or the **Department of Workforce Development—Equal Rights Division** using the contact information above.



SAFETY AND HEALTH

Summary: You have the right to a safe and healthy workplace. You should have proper safety equipment, the proper training, and instruction and information about any chemicals or materials used in your workplace. If you believe your workplace is unsafe you can file a complaint with the Occupational Safety and Health Administration ("OSHA").

Occupational Safety and Health Administration (OSHA)
(608) 441-5388 (Madison)
(414) 297-3315 (Milwaukee)
(715) 832-9019 (Eau Claire)
(920) 734-4521 (Appleton)
www.OSHA.gov

The Occupational Safety and Health Act

The Occupational Safety and Health Act of 1970 guarantees the right to safe and healthy working conditions. **Under this Act, all employers must:**

- **Provide a safe workplace** that is free of unsafe and hazardous conditions
- **Examine the workplace** to make certain that it follows OSHA standards and regulations
- **Provide safe tools and equipment** and properly maintain this equipment
- **Use color codes, labels, signs, and posters** to warn workers of possible safety hazards
- **Provide medical examinations and training** when required by OSHA standards
- **Display in a prominent place the OSHA poster** informing workers of their rights and responsibilities
- **Report to the nearest OSHA office within 8 hours any fatal accident or any accident that results in 3 or more workers being admitted to the hospital**
- **Keep records of all work-related injuries and illnesses** (this does not apply to employers with 10 or less workers or employers in low-hazard industries). All current workers, former workers, and their representatives must have access to these records
- **Not discriminate against workers who exercise their rights under this Act**
- **Post OSHA violation notices at or near the hazardous work area.** These notices and citations must be displayed for 3 days or for as long as the violation remains unfixed, whichever is longer.



All Workers Have The Right To:

- **Receive training** on how to do a job and handle equipment safely
- **Request information from employers:**
 - about the health and safety hazards of their workplace
 - about the standards and regulations regarding workplace safety
 - about the chemicals and other toxic substances used in the workplace
 - about relevant exposure and medical records regarding the workplace
- **Receive the proper equipment** to do the job safely

ness. Undue hardship is defined as an **action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.**

An employer is **not** required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Under the ADA, employers may **NOT**:

- Recruit only job applicants without obvious disabilities
- Ask job applicants to describe disabilities or take medical examinations before a job offer is made
 - Applicants may be asked about their ability to perform specific job functions. *A job offer may be conditioned on the results of a medical examination, **but only** if the examination is required for all entering employees in similar jobs.* Medical examinations of employees **must be job related and consistent with the employer's business needs.**
- Give fewer or less attractive advancement opportunities to qualified workers with disabilities than to others
- Fire a qualified worker because of a disability
- Treat qualified workers with disabilities worse than non-disabled workers
- Retaliate against an individual for opposing employment practices that discriminate based on a disability, or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADA.

In Wisconsin:

Wisconsin's Fair Employment Law gives civil rights protections to qualified individuals with disabilities. Unlike the federal ADA, the Fair Employment Law applies to all public and private workers, regardless of the number of workers.

Under the Wisconsin law, disabled people are protected from discrimination in:

- Recruitment and hiring
- Job assignments
- Pay
- Leave or benefits
- Promotion
- Licensing or union membership



DISABILITY DISCRIMINATION

The **Americans with Disabilities Act (“ADA”)** protects job applicants and workers from discrimination in hiring, classification, grading, discharge, discipline, compensation, or other terms and conditions of employment based on disability.

The ADA covers private employers who employ **15 or more workers**. It also covers **state and local government employers, employment agencies, labor unions, and the U.S. Congress**.

An individual with a disability is a person who

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; OR
- Is regarded as having such an impairment

Under the ADA, a current user of illegal drugs is not protected, although an individual who is recovering or who is in a supervised rehabilitation program is covered

Reasonable accommodations for people with disabilities include, but are not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

Disabled Individuals’ Rights

If you are qualified and can do the job, your employer must make reasonable accommodations for you to perform the job. These accommodations can include:

- Changing equipment so that you can use it;
- Changing your work schedule; and
- Making buildings and facilities more accessible.

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee **if it would not impose an “undue hardship” on the operation of the employer’s busi-**

- **Request that employers fix and correct workplace health and safety hazards**, even if these hazards are not OSHA violations
- **File a complaint with OSHA** if there are OSHA violations or other serious safety hazards at the workplace
 - OSHA is the government agency in charge of seeing that dangerous or unhealthy workplace conditions are fixed
 - After a complaint is filed with OSHA, OSHA will conduct an inspection of the workplace
 - Workers may choose to remain confidential if they do not want their employer to know that they filed an OSHA complaint
 - Workers can make complaints without their employer’s knowledge, either on their own or with the help of an attorney
- **Be involved in the OSHA workplace inspection**
 - A representative of the workers can accompany the OSHA investigators on their inspection of the workplace
 - The employer *may not* choose the worker representative
 - Workers are allowed to ask the OSHA inspectors questions confidentially, point out safety violations at the workplace, and describe injuries and medical conditions suffered as a result of the violations
 - Workers can inform the OSHA investigators if the employer has changed anything in the workplace just for the inspection, including turning off equipment, opening windows, or anything else that is not part of the normal workplace routine or environment
- **Find out the results of an OSHA inspection**
 - OSHA will let the employees’ representative know the outcome of the inspection and investigation
- **Not to be fired or retaliated against for making suggestions or filing a complaint with OSHA:**
 - Workers can file discrimination complaints if they are punished for reporting a violation or exercising their health and safety rights
 - Workers can also file a discrimination complaint if they were punished for refusing to work when there was an imminent danger of death or serious bodily harm and there was no time for an OSHA inspection
 - Workers who have been punished or discriminated against because they complained about a safety hazard or violation

All workers have the right to see any records kept by their employers regarding exposure to hazardous materials, or the results of medical surveillance of the workplace.

must file their discrimination complaint in court **within 30 days** of the punishment or discrimination

- **Private Sector Workers** should file complaints with OSHA
- **Public (Government) Workers** should contact their internal safety committee

Workers Have Responsibilities To:

- Read and understand the OSHA posters and signs at the workplace
- Follow all OSHA standards and regulations
- Follow all workplace safety rules and use all protective equipment and clothing while working
- Report hazardous conditions to the supervisor
- Report all job-related injuries and illnesses to the employer and seek treatment promptly
- Exercise OSHA rights thoroughly and responsibly

Hazardous Chemicals

Employers are required to provide information and training about the hazardous chemicals to which workers are exposed.

Employers Must:

- **Inventory** all chemicals that are used in the workplace;
- **Evaluate hazardous materials** by using lists to determine if they cause cancer, reproductive damage or birth defects;
- **Develop a written Hazard Communication Program**
 - This written plan must list chemicals present at the site
 - List where chemical information will be available to employees
 - Identify who is responsible for this program at the workplace
 - Explain how requirements for chemical labeling, safety data sheets, and employee information and training are going to be met in the workplace
- **Label chemical containers**
 - Name of the chemical
 - Manufacturer of the chemical
 - Hazard warnings (a brief statement of the hazardous effects of the chemical)
 - Labels must be legible and prominently displayed
 - Optional: precautionary measures (ex. “do not use near open flame”)

to request an appeal of this determination. If no appeal is requested, the case is closed. If the determination is appealed, then a hearing examiner will review the investigator’s decision. Either party may submit additional information to the hearing examiner. The examiner may uphold or overturn an investigator’s determination. If the hearing examiner upholds the investigator’s determination, the complaining worker can appeal the decision to the Equal Opportunities Commission. If there is no appeal, the case will be closed.

- **Probable Cause** – the investigator will make a determination of Probable Cause if he/she concludes that discrimination *may* have occurred. There is no appeal for this determination. After a determination of Probable Cause, the case moves to **Conciliation**.
- **Conciliation** is a voluntary process to try to settle the case. After a Probable Cause determination is made, the parties will be asked if they want to try to discuss a settlement. If both parties agree, the conciliator will arrange a conference. If either or both parties do not wish to discuss a settlement, or if they cannot reach an agreement, the case will proceed to a hearing on the merits.

What Happens At The Hearing?

- At the hearing, each party may present evidence, call witnesses, cross-examine witnesses, make objections, and make opening and closing statements.
- The hearing examiner will preside over the hearing and decide if discrimination occurred. The examiner will NOT consider information from the investigation – you **MUST** present all of the evidence and call all of the witnesses at the hearing that you want the examiner to consider. You may ask the examiner to issue subpoenas for the witnesses and documents that you want to present.
- Based on the evidence presented at the hearing, the examiner will decide whether or not discrimination occurred. This decision is called the **Recommended Findings of Fact, Conclusion of Law, and Order**. This decision will have a finding of discrimination and a remedy for the discrimination, or, if there was a finding of no discrimination, why there was a finding of no discrimination.

Commission And Court Appeals

- Either party may request an appeal of the hearing. This appeal is submitted to the EOC. The Commission reviews the record made at the hearing – NO new evidence is submitted.
- Either party may appeal the decision of the Commission to the circuit court.

- Fill out the complaint form at <http://www.cityofmadison.com/dcr/documents/ComplaintDiscrForm.pdf>
- Make certain to complete the entire form. Be clear and give as many details as possible. Write exactly what happened to show how you were treated differently because you were a member of a protected class.
- Remember that it is necessary that you show that you were treated differently than other workers who were **NOT** members of your protected class. When comparing, use examples where you and other people were treated differently under similar circumstances.

Example:

Let's say you are the only African-American employee working at a day care center. Throughout your time working at the center your boss asks you to do things that she does not ask other employees to do. She has you clean the bathrooms. Although everyone has the same responsibilities, she never asks the other employees to clean the bathrooms. When you mention that you think that the situation is unfair, she tells you, "That's the way it is." The next day you are fired.

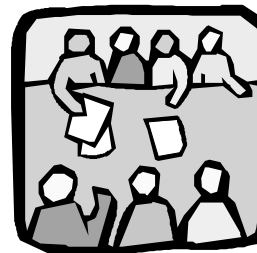
This example shows a case where you might have been discriminated against. It would be important for you to include in your statement the following information when writing a complaint:

- The protected classes you belong to - race (ex. African-American) and retaliation (because you were fired after complaining).
- You were treated differently than the other employees that you work with under similar circumstances (ex. you were asked to clean the bathrooms, although everyone has the same responsibility).
- The other employees with whom you are comparing yourself do not belong to your protected class(es) (ex. they are not African American, and they were not retaliated against), but they are employed in a similar position to you

What Happens After I File My Complaint?

- After you file your complaint, your case will be assigned to an investigator. The investigator will collect information from both parties.
- While the investigation is proceeding, the EOC will assign a mediator to your case. A mediator will talk to both parties and try to help them reach a settlement. This mediation process is voluntary.
- If a settlement cannot be reached, the investigation will be completed and you will receive an initial determination. The initial determination will be either **No Probable Cause** or **Probable Cause**:
 - **No Probable Cause** – the investigator will make a determination of No Probable Cause if he/she concludes that no discrimination occurred. The complaining worker has the right

• Provide Material Safety Data Sheets ("MSDS")



- Employers must provide a MSDS for every hazardous chemical they use in the workplace
- Employers may rely on information provided by their chemical suppliers
- Included on the MSDS must be:
 - Potential hazardous effects
 - Physical and chemical characteristics
 - Recommendations for appropriate protective measures
- The MSDS sheets must be easily accessible to every worker in the workplace. Many employers store all the MSDS sheets in binders at a central location. Others have computer databases which can be accessed by all employees.
- If the MSDS is not readily available, it must be requested in writing *before* using the hazardous chemical. **Within 15 days of the request for a MSDS, the employer must place the MSDS on the side of the chemical container.** If the employer does not comply with the request for a MSDS, contact OSHA, a union representative, or an attorney.
- **Train workers** about the chemicals' health effects, and in the safe handling, storage, and transportation of the chemicals.

The chemical inventory and the Material Safety Data Sheets (MSDS) must be accessible at all times, on all shifts. If you do not know the effects of a substance or how to handle it, consult the MSDS. If an MSDS is not readily available, request it in writing before using the hazardous substance.

How to File an OSHA Complaint: Step-By-Step

The Occupational Safety and Health Act of 1970 gives employees the right to file complaints about workplace safety and health hazards. Further, the Act gives workers the right to request that their names not be revealed to their employers. Complaints from employees and their representatives are taken seriously by OSHA.

1. File A Complaint

- **Workers may file complaints online or in writing:**
 - Online – online complaints are resolved using OSHA's phone and fax system. This means that a worker

complaint filed online might be resolved informally over the phone with the employer

- Written Complaint – written, signed complaints are more likely to result in formal, onsite inspections of the workplace
- **Download the OSHA complaint form at:**
<http://www.osha.gov/oshforms/osa7.pdf>
 - Fax or mail the completed form to the local OSHA Regional Office (see Wisconsin contact information above).
 - Be sure to include a name, address, and telephone number so that OSHA can contact you.
 - Workers do *not* need a complaint form to file a complaint. Workers only need to send the name and address of their workplace, a detailed description of the unsafe or unhealthful condition, and a signed statement that the person making the complaint is a worker.
- **File a discrimination complaint** if your employer has *punished you for exercising any employee rights established under the OSH Act or for refusing to work when faced with an imminent danger of death or serious injury and there is insufficient time for OSHA to inspect*. You can file a complaint by calling your local OSHA Regional Office (see Wisconsin information above). In states with approved state plans, employees may file a complaint with both the State and Federal OSHA.
- **If there is an emergency, or the hazard is immediately life threatening, call the local OSHA office (see Wisconsin OSHA offices, above) or call 1-800-321-OSHA**

2. When Can A Complaint Be Filed?

- OSHA recommends that employees try to resolve safety and health issues first by reporting them to their supervisors, managers or the safety and health committee. At any time, however, employees can complain to their local OSHA Regional Office and ask for an inspection or an investigation.

3. Who Can Complain?

- Employees or their representatives have a right to request an inspection of a workplace if they believe there is a violation of a safety or health standard, or if there is any danger that threatens physical harm, or if an "imminent danger" exists. Anyone who knows about a workplace safety or health hazard may complain, and OSHA will investigate the concerns reported.
- An "imminent danger" is a hazard that:
 - Poses a threat of death or serious physical harm. "Serious

these protected classes or because of his/her association with someone belonging in one of these classes.

- It is very important to show that the discrimination or unfair treatment occurred because of the worker's membership in a protected class and NOT for any other reason.

Example:

If your employer wrote you up because you came in to work late, you cannot automatically assume that your employer discriminated against you. It is important to notice whether or not you were singled out. For example, if you are the only Hispanic cook at a restaurant, and you notice that the employer wrote you up when you were 15 minutes late, but did not write up any of the other cooks when they came in 15 minutes late. This sort of action could signal discrimination based on membership in a protected class.

What Documents And Materials Should I Keep?

- Keep a written record of any actions and comments that may help to show that you were discriminated against.
- Write down the date and time of conversations you had with your supervisor or anyone else. Write down and keep the name of witnesses, notices and letters you thought were discriminatory, and any responses that you received from your employer.
- You do NOT need this information to file a complaint, but it will help you present your case once the investigation begins.

Witnesses

- It can help your case if you find people who witnessed the discrimination you experienced. The Equal Opportunity Commission will not call these witnesses, but it is **your responsibility** to get a written statement from them.
- Ask all witnesses to write a statement about what they saw and heard. Ask them to sign and date their statement and write their phone number and address. Keep these statements in a personal file separate from any workplace files. These statements can be helpful after you file a complaint for discrimination.

How Do I File A Complaint With The EOC?

- It is **your** decision as to whether or not to be represented by an attorney. However you do NOT need an attorney for the EOC process. You can also represent yourself or you can have an advocate.

Employment agencies may not discriminate in referrals for employment.

Can I File A Discrimination Complaint With The Madison EOC?

- The EOC accepts complaints from all job applicants as well as full-time, part-time, seasonal, and temporary employees. The EOC also accepts complaints that involve employment agencies and labor unions. They do **NOT** accept cases involving an independent contractor relationship.
- In order for the EOC to investigate a complaint, complaining parties must satisfy three factors:
 - **Location:**
 - The discrimination must have occurred within the City of Madison
 - **Length of Time Between the Incident and the Filing of the Complaint:**
 - A complaint must be filed ***within 300 days*** of the incident, unless the discrimination is continuous and ongoing
 - **Legal Requirements:**
 - The complaining party must belong to one of the following protected groups:
 - Sex
 - Age
 - Race
 - Color
 - Religion
 - Arrest Record
 - Conviction Record
 - Marital status
 - Student status
 - National Origin or Ancestry
 - Physical Appearance
 - Handicap/Disability
 - Sexual Orientation
 - Political Beliefs
 - Source of Income
 - Retaliation
 - Less-than-Honorable Discharge from the military
 - **AND** the complaining party must show that the incident occurred because he/she is a member of one of

physical harm" means that a part of the body is damaged so severely that it cannot be used or cannot be used very well.

- Poses a threat in that there must be a reasonable expectation that toxic substances or other health hazards are present and exposure to them will shorten life or cause substantial reduction in physical or mental efficiency. The harm caused by the health hazard does not have to happen immediately.
- A hazard that is immediate or imminent. This means that you must believe that death or serious physical harm could occur within a short time, for example before OSHA could investigate the problem.

4. What Information Must The Worker Provide?

- Workers or their representatives must provide enough information for OSHA to determine that a hazard probably exists. *Workers do not have to know whether a specific OSHA standard has been violated in order to file a complaint.*
- Helpful information includes the following:
 - How many workers are at the workplace and how many of them are exposed to the hazard?
 - How are workers exposed to the hazard and at what times of the day/night?
 - What type of equipment is used? Is the equipment in good condition?
 - What materials and/or chemicals are used?
 - Have employees been trained in how to handle hazardous materials or equipment?

5. How Does OSHA Respond To Worker Complaints?

OSHA can respond to complaints in two ways:

- **On-Site Inspection**
 - On-Site inspections usually occur for hazards that pose an imminent danger to workers. These are hazards that expose workers to death or serious bodily harm. This includes any fatality or catastrophe that results in the hospitalization of three or more workers. However, OSHA will consider conducting on-site inspections for all complaints received.
 - If OSHA decides to conduct an on-site investigation, it will contact the employer and notify them of the complaint. The name of the complaining worker will not be revealed to the employer. OSHA will advise the employer that it should investigate and determine whether the com-

plaint is valid. The employer then has 5 days to send a response to OSHA. The employer is required to share this response with all the workers at the workplace.

- The workers have the right to select a representative to accompany the inspector on his tour of the workplace. However, any worker can talk to the inspector confidentially. Workers are encouraged to point out hazards, describe illnesses and accidents that resulted from hazards. Workers should also inform the inspector if the conditions on the day of the inspections are different from how they are normally.
- **Off-Site Investigation** (also called a “phone/fax investigation”)
 - This investigation is used when a phone, fax, or letter investigation would be a better alternative than an on-site investigation.
 - This investigation is used for hazards that are not as urgent or threatening.
 - In this investigation, OSHA telephones the employer, describes the alleged hazards and then follows up with a fax or letter. The employer must respond in writing within five days, identifying any problems found and noting corrective actions taken or planned. If the response is adequate, OSHA generally will not conduct an inspection. The employee or employee representative who filed the original complaint will receive a copy of the employer's response.
 - However, if workers are not satisfied with this investigation, they have the right to request an on-site inspection.

6. HOW TO GET THE MOST OUT OF AN OSHA INSPECTION:

- **Gather Information** about hazards before you file a complaint
- **Tell your supervisor** about the hazard. Put these concerns in writing and keep a copy. OSHA will ask if your employer knows about the hazard.
- **Get help from your union.** If you do not have a union, enlist as many workers as you can who are directly affected by the safety hazard to talk to OSHA.
- **Prepare documentation** of specific hazards and incidents, who was involved, and when the incidents occurred.
- **Give OSHA names of other workers or witnesses** who are aware of the problem.
- The OSHA inspector will hold opening and closing conferences with the employer. If the worker decides to reveal his/her identity,

the complaint process.

What Happens If There Is No Settlement?

- If there is no settlement, the Equal Rights officer will complete an investigation and determine whether or not there is **Probable Cause** that the law was violated:
 - **Probable Cause** – this is *not* a finding that there was discrimination. Rather, it means that the investigator found enough believable information about discrimination to send the case to a **formal hearing**.
 - **No Probable Cause** – If an investigator finds that there is **no probable cause**, it means that there was not enough evidence of discrimination. This does NOT mean that there was no discrimination. The case is dismissed, but the complaining worker can file an appeal within **30 days**.

What Happens At The Formal Hearing?

- Discrimination hearings are similar to court proceedings. Both parties present evidence under oath before an administrative law judge (ALJ).
- The ALJ reviews the evidence and hears testimony of witnesses, then issues a decision on whether or not discrimination occurred. **All** relevant evidence and testimony must be presented at this hearing. It is the only chance for the parties to do so. Information given earlier to the investigator is not considered at the hearing.
- The judge cannot represent either party. It is advisable for parties to have a lawyer at this point, although having a lawyer is NOT required.

What Remedies Are Available If The Judge Finds Discrimination?

- If discrimination is proven, the judge has the choice of awarding lost wages, interest on lost wages, and attorney fees and costs.

How To File A Complaint With The City Of Madison Equal Opportunities Commission (“EOC”)

Pursuant to Madison General Ordinance 39.03, the Equal Opportunities Commission prohibits discrimination by employers in accepting applications, hiring, tenure, general conditions and privileges of employment and discharge.

Labor unions may not discriminate against any member or applicant for membership.

How To File A Charge With The State Department of Workplace Development Equal Rights Division (DWD-ERD)

How Is A Complaint Filed With The Equal Rights Division?

- A person who believes that he/she is the victim of unlawful employment discrimination may file a complaint with the Equal Rights Division **within 300 days** of the discriminatory action
- A worker who wants to file a complaint should fill out the online or mail-in form provided through the links in the table above

How Long Does It Take To File And Process Complaints?

- Resolution of some cases may take longer than **one year**. The Division makes every effort to settle or resolve cases in a timely manner.

What Happens After A Complaint Is Filed?

- The complaint is assigned to an equal rights officer to be investigated
- The investigator acts independently, and does NOT represent either the complaining worker or the employer
- The investigator CANNOT give legal advice to either party. An attorney should be contacted if the worker needs legal advice. The Equal Rights Division can provide a list of attorneys who handle fair employment law cases.
- After the complaint is received by the Equal Rights Division, a copy of the complaint is sent to the employer, who must provide a written answer to the complaint. The investigator may still contact the worker or employer after receiving this answer in order to get additional information. The investigator may also ask the worker and the employer if they want to resolve the case through settlement.

Should I Consider Settlement?

- Settlement is often a good option for *both* parties. The Equal Rights Division staff is trained to assist the parties in working out a fair, equal, and voluntary settlement agreement.
- The option of having a settlement is available *at any time* during

he/she has a right to attend these conferences.

- At the **opening conference**, the OSHA inspector will explain the purpose of the visit, the scope of the inspections, and the standards that will apply.
- At the **closing conference**, which is held after OSHA inspects the workplace, there is a free discussion of problems and needs, and frank questions and answers about workplace safety.
- **If you have a union**, your union will usually designate a worker to participate in the opening and closing conferences. Similarly, if there is a plant/factory safety committee, members of that committee will designate a worker representative. Where there is no union or safety committee, the workers may select a worker representative themselves.
- **Request copies of the inspection results.**



EMPLOYMENT DISCRIMINATION

Summary: *Civil rights laws protect individuals who are members of certain groups against discrimination in employment. Federal laws, State laws, and, if your employer is located in the City of Madison, Madison laws cover many different forms of discrimination. Types of discrimination prohibited by these various laws are summarized below:*

Type of claim	Federal law	Wisconsin State law	City of Madison law
Age	yes	yes	yes
Arrest and Conviction record	no	yes	yes
Disability	yes	yes	yes
Less-than-honorable military discharge	no	yes	yes
Marital status	no	yes	yes
Military Membership	no	yes	yes
National origin	yes	yes	yes
Physical appearance	no	no	yes
Political beliefs	no	no	yes
Race	yes	yes	yes
Religion	yes	yes	yes
Sex	yes	yes	yes
Sexual harassment	yes	yes	yes
Sexual orientation	no	yes	yes
Source of income (welfare)	no	no	yes
Use of lawful products (tobacco)	no	yes	no

These laws prohibit discrimination in any term and condition of employment, including pay, hours, work assignments, hiring, firing, promotions, or layoffs.

What Are The Time Limits For Filing A Discrimination Charge With The EEOC?

- All laws enforced by EEOC, except the Equal Pay Act, require filing a charge with EEOC before a private lawsuit may be filed in court. There are strict time limits within which charges must be filed:
 - A charge must be filed with EEOC **within 180 days** from the date of the alleged violation
 - This 180-day filing deadline is **extended to 300 days if the charge also is covered by a state or local anti-discrimination law**
 - To protect legal rights, it is always best to contact EEOC promptly when discrimination is suspected

How Is A Charge Filed For Discrimination Outside The United States?

- U.S.-based companies that employ U.S. citizens outside the United States or its territories are covered under EEO laws, with certain exceptions. A worker alleging discrimination outside the U.S. should file a charge with the district office closest to his or her employer's headquarters. However, if you are unsure where to file, you may file a charge with any EEOC office.

When Can An Individual File An Employment Discrimination Lawsuit In Court?

- If, after reviewing the evidence, the EEOC determines that discrimination has occurred, the EEOC will attempt to negotiate with the employer to try and find a remedy to the situation.
- If the EEOC is successful at negotiating a remedy with the employer, and the remedy is implemented faithfully by the employer, neither the charging worker nor the EEOC may go to court unless the employer violates the remedy agreement.
- If the EEOC is not successful at negotiating a remedy with the employer, the EEOC will decide whether they want to bring a lawsuit against the employer in federal court on behalf of the complaining worker. If the EEOC decides *not* to bring a lawsuit, the complaining worker has **90 days to bring a lawsuit** on their own behalf. These 90 days begin *after* the EEOC sends the worker a note saying that they are not bringing a lawsuit and that the worker has the “right to sue”.

How to File A Charge With the Federal Equal Employment Opportunity Commission (EEOC):

Who Can File A Charge With The EEOC?

- Any individual who believes that his or her employment rights have been violated may file a charge of discrimination with EEOC.
- An individual, organization, or agency may file a charge with the EEOC on behalf of another person who want to keep his/her identity a secret.

How Is A Charge Of Discrimination Filed?

- When filing a charge with the EEOC, you may be asked to fill out an **intake questionnaire** that may be submitted by mail or in person at the nearest EEOC office (see link in table above). An intake questionnaire or other correspondence **can** constitute a charge under the statutes we enforce **if** it contains all the information required by EEOC regulations governing the contents of a charge and constitutes a clear request for the agency to act.
- Workers who need the assistance of an interpreter, sign language specialists, large-font printed materials, etc. to file a charge should inform the EEOC local office so that accommodations can be made.

What Information Must Be Provided To File A Charge?

- The complaining party's name, address, and telephone number;
- The name, address, and telephone number of the employer, employment agency, or union that is alleged to have discriminated, and number of workers (or union members), if known;
- A short description of the alleged discrimination;
- The date of the alleged discrimination;

While these laws make many types of discrimination illegal, it is important to know what forms of discrimination or unfair practices they **do not** cover. Most workers are considered “**at will**” workers. This means that an employer does not need to have a good reason to fire a worker. A worker can be fired for any reason or for no reason at all. In the same manner, a worker can quit for any reason or no reason at all.

It is perfectly legal for employers to choose not to hire or fire workers because they do not like the way the worker dresses, do not like the color of their hair, or because the employer thinks the worker is lazy or supports the wrong football team.

Many employers abuse this power and workers are surprised to learn there is nothing they can do about it. There are only **two limitations** on such abuses:

- **First, the employer cannot fire a worker for one of the prohibited reasons in the chart above.**
- **Second, an employer must prove it has a valid reason to fire or discipline a worker who is covered by a union contract or other written employment agreement.**

Addressing Workplace Discrimination

A successful discrimination complaint can result in one or more of the following outcomes:

- Reinstatement
- Promotion
- Compensation for lost wages and benefits
- Damages for emotional distress caused by the discrimination
- Punitive damages (to punish the employer for the discrimination)
- Attorneys' fees
- Court orders to change discriminatory policies

If you believe you have been discriminated against, you can file a charge with one of three agencies:

- **The Equal Employment Opportunities Commission (EEOC)**
 - This is the federal agency that monitors employment discrimination. Filing a complaint with the EEOC allows you to go to federal court and get a jury trial, and perhaps recover more substantial money damages than are permitted through the DWD-ERD, below, such as damages for emotional distress.
 - The EEOC can hear cases on race, sex, age, national origin, and disability.

- The EEOC **does not** hear cases on sexual orientation, marital status, arrest-and-conviction record, military membership, and the use of lawful products.
- **The Wisconsin Department of Workforce Development Equal Rights Division (DWD-ERD)**
 - This agency generally processes complaints faster than the EEOC or the MEOC.
 - The DWD-ERD can hear cases on race, sex, age, national origin, and disability.
 - Only the DWD-ERD or the MEOC, below, can hear cases based on sexual orientation, marital status, and arrest-and-conviction record.
 - Only the DWD-ERD can hear cases involving military membership and the use of lawful products (ex. tobacco).
- **Madison Equal Opportunities Commission (MEOC)**
 - MEOC can hear cases on race, sex, age, national origin, and disability.
 - MEOC can hear cases based on sexual orientation, marital status, and arrest-and-conviction record.
 - Only the MEOC can hear cases on sources of income (welfare), political ideas and beliefs, less-than-honorable military discharge, student status, or physical appearance.

*You **do not** need a lawyer to file a charge against your employer with any of these agencies. Each agency has its own form to complete. You can mail the complaint or complete it at the agency's office. Sometimes, agency employees will help you to fill out the charge form.*

Contact details and links to forms for these agencies are found below:

Federal:

EEOC Milwaukee Office
 Ruess Federal Plaza
 310 West Wisconsin Ave, Ste. 800
 Milwaukee, WI 53203-2292
 Tel: 1-800-669-4000
 TTY: 1-800-669-6820
 Fax: (414) 297-4133

U.S. Equal Employment Opportunity Commission
 131 M Street NE
 Washington, D.C. 20507
 Tel: 1-800-669-4000
 (202) 663-4900
 TTY: 1-800-669-6820
 E-Mail: info@eeoc.gov
 Web: www.eeoc.gov

Link to complaint form: <https://apps.eeoc.gov/eas/>

State:

Department of Workplace Development
 Equal Rights Division
 201 E. Washington Avenue,
 Room A300
 P.O. Box 8928
 Madison, WI 53708-8928
 Tel: (608) 266-6860
 TTY: (608) 264-8752
 Fax: (608) 267-4592
<http://www.dwd.state.wi.us/er/>

Online Form: <http://dwd.wisconsin.gov/discriminationcomplaint/>

Mail-In Form: http://dwd.wisconsin.gov/dwd/forms/ERD/pdf/erd_4206.pdf

Madison:

City of Madison
 Department of Civil Rights
 210 Martin Luther King, Jr.Blvd.
 Room 523
 Madison, WI 53703-3346
 Tel: (608) 266-4910
 TTY: (866) 704-2314
 Fax: (608) 266-6514
 E-Mail: dcr@cityofmadison.com
 Web: www.cityofmadison.com/dcr

Online Form: <http://www.cityofmadison.com/dcr/documents/ComplaintDiscrFrm.pdf>